



भारत का राजपत्र The Gazette of India



असाधारण
EXTRAORDINARY

भाग II—खण्ड 2
PART II—Section 2

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 24] नई दिल्ली, शुक्रवार, मई 12, 1978/वैशाख 22, 1900
No. 24] NEW DELHI, FRIDAY, MAY 12, 1978/VAISAKHA 22, 1900

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 12th May, 1978:—

Bill No. 85 of 1978.

A Bill further to amend the Aligarh Muslim University Act, 1920

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Aligarh Muslim University (Amendment) Act, 1978.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

40 of 1920.

2. In the Aligarh Muslim University Act 1920 (hereinafter referred to as the principal Act), in the long title and in the preamble, the words "establish and" shall be omitted.

Amendment of long title and preamble.

3. In section 2 of the principal Act,—

Amendment of section 2.

(i) after clause (h), the following clause shall be inserted, namely:—

“(hh) “non-teaching staff” means the employees of the University other than the teachers;”;

(ii) clause (j) shall be omitted;

(iii) for clause (I), the following clause shall be substituted, namely:—

“(I) “University” means the educational institution, which originated as the Muhammadan Anglo-Oriental College, Aligarh, established by the Muslims of India, and which was incorporated in 1920 by this Act.”

Amend-
ment of
section 5.

4. In section 5 of the principal Act,—

(i) in clause (2), after sub-clause (b), the following sub-clause shall be inserted, namely:—

“(c) to promote especially the educational and cultural advancement of the Muslims of India;”;

(ii) in clause (7), the words “and determine their conditions of service” shall be added at the end;

(iii) for clause (9), the following clause shall be substituted, namely:—

“(9) to institute and maintain halls for the students of the University;”;

(iv) in clause (11B), the words “and determine their conditions of service” shall be added at the end;

(v) in clause (11E), the word “and” shall be added at the end;

(vi) clause (11F) shall be omitted.

Amend-
ment of
section 8.

5. In section 8 of the principal Act, in the opening paragraph, the words, brackets and figures “before the commencement of the Aligarh Muslim University (Amendment) Act, 1972,” shall be omitted.

Amend-
ment of
section 13.

6. In sub-section (2B) of section 13 of the principal Act, after the words “the Visitor may”, the words “, if he considers it necessary,” shall be inserted.

Substitu-
tion of
new sec-
tion for
section
15.

7. For section 15 of the principal Act, and the heading to that section, the following heading and section shall be substituted, namely:—

“Rector

Rector.

15. The Governor of the State of Uttar Pradesh shall be the Rector of the University.”.

Amend-
ment of
section 16.

8. In section 16 of the principal Act,—

(i) after clause (3A), the following clause shall be inserted, namely:—

“(3B) The Honorary Treasurer;”;

(ii) existing clauses (3B), (3C) and (3D) shall be re-numbered as clauses (3C), (3D) and (3E) thereof respectively.

Substitu-
tion of
new
section for
section 17.

9. For section 17 of the principal Act, the following section shall be substituted, namely:—

The Chan-
cellor.

“17. (1) The Chancellor of the University shall be elected by the Court in such manner and for such term as may be prescribed by the Statutes.

(2) The Chancellor shall, by virtue of his office, be the Head of the University.

(3) The Chancellor shall exercise such powers as may be prescribed by the Statutes."

10. For section 18 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 18.

"18. (1) The Pro-Chancellor shall be elected by the Court in such manner and for such term as may be prescribed by the Statutes.

The Pro-Chancellor.

(2) The Pro-Chancellor shall exercise such powers as may be prescribed by the Statutes."

11. In section 19 of the principal Act, for sub-sections (2), (3) and (4), the following sub-section shall be substituted, namely:—

Amendment of section 19.

"(2) The Vice-Chancellor shall exercise such powers and perform such functions as may be prescribed by the Statutes and the Ordinances."

12. Sections 20A and 20B of the principal Act shall be renumbered as sections 20B and 20C respectively, and before section 20B as so renumbered, the following section shall be inserted, namely:—

Insertion of new section 20A.

"20A. (1) The Honorary Treasurer shall be elected by the Court in such manner and for such term as may be prescribed by the Statutes.

The Honorary Treasurer.

(2) The Honorary Treasurer shall exercise such powers and perform such functions as may be prescribed by the Statutes."

13. In section 21 of the principal Act, after the words "the Pro-Vice-Chancellor," the words "the Honorary Treasurer," shall be inserted.

Amendment of section 21

14. In section 22 of the principal Act,—

Amendment of section 22.

(i) after clause (3), the following clause shall be inserted, namely:—

"(3A) The Finance Committee;"

(ii) in clause (3B), the word "and" shall be inserted at the end;

(iii) clause (3C) shall be omitted.

15. In section 23 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:—

Amendment of section 23.

"(2) The Court shall be the supreme governing body of the University and shall exercise all the powers of the University, not otherwise provided for by this Act, the Statutes, the Ordinances and the Regulations.

(3) Subject to the provisions of this Act, the Court shall also have the following powers and functions, namely:—

(a) to review such actions taken by the Executive Council and the Academic Council as are not in accordance with the powers conferred on them by or under this Act, the Statutes or the Ordinances;

(b) to make new or additional Statutes or amend or repeal the Statutes;

(c) to consider and pass resolutions on the annual report, the annual accounts of the University and the financial estimates;

(d) to elect such officers of the University and such members of the authorities of the University, as are required to be elected by the Court under the provisions of this Act and the Statutes; and

(e) to exercise such other powers and perform such other functions as may be prescribed by the Statutes."

Amend-
ment of
section 26.

16. In section 26 of the principal Act, for the words "and functions of the Faculties and of the Students' Council", the words "and functions of the Finance Committee and the Faculties" shall be substituted.

Amend-
ment of
section 27.

17. In section 27 of the principal Act,—

(i) in clause (a), the words ", the Finance Committee" shall be omitted;

(ii) for clause (c), the following clause shall be substituted, namely:—

"(c) the manner of appointment or election, as the case may be, of the Chancellor, the Pro-Chancellor, the Vice-Chancellor and other officers of the University;"

Substitu-
tion of
new sec-
tion
for section
28.

18. For section 28 of the principal Act, the following section shall be substituted, namely:—

Statutes.

"28. (1) On the commencement of the Aligarh Muslim University (Amendment) Act 1978, the Statutes in force immediately before such commencement shall be the Statutes of the University:

Provided that where any such Statute is amended by the Act aforesaid, the concerned Statute as amended by that Act shall be a Statute of the University.

(2) After the commencement of the Aligarh Muslim University (Amendment) Act, 1978, the Court may, notwithstanding anything contained in sub-section (1), make new or additional Statutes or may amend or repeal the Statutes referred to in sub-section (1).

(3) The Executive Council may propose to the Court the draft of any Statute for its consideration and such draft shall be considered by the Court at its next meeting:

Provided that the Executive Council shall not propose a draft of any Statute or of any amendment of a Statute affecting the status, powers or constitution of any authority of the University until such authority has been given an opportunity of expressing an opinion in writing upon the proposal and any opinion so expressed shall be considered by the Court.

(4) The Court may approve any such draft as is referred to in sub-section (3) or reject it or return it to the Executive Council for re-consideration either in whole or in part together with any amendments which the Court may suggest.

(5) A member of the Court may propose to the Court, a draft of any Statute and the Court may reject the proposal or refer such draft for consideration to the Executive Council, which may either reject the proposal or submit the draft to the Court in such form as the Executive Council may approve, and the provisions of this section shall apply in the case of any draft so submitted as they apply in the case of a draft proposed by the Executive Council.

(6) Every new Statute or addition to the Statutes or any amendment

or repeal of any Statute, shall require the previous approval of the Visitor who may sanction or disallow it, or remit it for further consideration."

19. In section 29 of the principal Act,—

Amend-
ment of
section
29.

(i) in sub-section (1),—

(a) in clause (m), after the words "Examination Committee," the words "Library Committee," shall be inserted;

(b) after clause (m) the following clause shall be inserted, namely :—

"(mm) the recognition of degrees, diplomas or certificates of other institutions and bodies for purposes of admission to a course of study in the University and the withdrawal of such recognition;"

(c) in clause (p), after the word "teachers", the words "and other employees" shall be inserted;

(ii) in sub-section (2), for the proviso, the following proviso shall be substituted, namely :—

"Provided that in making the Ordinances in respect of the matters enumerated in sub-section (1), other than those enumerated in clauses (k) and (p), the Executive Council shall act on the recommendation of the Academic Council."

20. In sub-section (3) of section 31 of the principal Act, after the words "this section", the words "other than any Regulation made by the Court," shall be inserted.

Amend-
ment of
section
31.

21. For section 35 of the principal Act, the following section shall be substituted, namely :—

Substitu-
tion of
new sec-
tion for
section
35.

"35. (1) The annual accounts and balance sheet of the University shall be prepared under the direction of the Executive Council and shall, once at least every year and at intervals of not more than fifteen months, be audited by the Comptroller and Auditor-General of India or by such person or persons as he may authorise in this behalf.

Annual
accounts.

(2) A copy of the annual accounts together with the audit report thereon shall be submitted to the Court and the Visitor along with the observations of the Executive Council.

(3) Any observations made by the Visitor on the annual accounts shall be brought to the notice of the Court and the observations of the Court, if any shall, after being considered by the Executive Council, be submitted to the Visitor.

(4) A copy of the annual accounts, together with the audit report as submitted to the Visitor, shall also be submitted to the Central Government, which shall, as soon as may be, cause the same to be laid before both the Houses of Parliament.

(5) The audited annual accounts after having been laid before both the Houses of Parliament, shall be published in the Gazette of India."

Amend-
ment of
Statutes.

22. Notwithstanding anything contained in the principal Act, the Statutes of the University shall be amended as follows:—

(i) throughout the Statutes, for the words "Head of Department", wherever they occur, the words "Chairman of Department" shall be substituted, and such consequential amendments as the rules of grammar may require shall also be made;

(ii) for Statutes 1 and 1A, the following Statutes shall be substituted, namely :—

The
Chan-
cellor.

"1. (1) The Chancellor shall be elected by the Court by a simple majority in accordance with the Regulations made by the Court.

(2) The Chancellor shall hold office for a term of three years and shall be eligible for re-election.

(3) The Chancellor shall, if present, preside over the convocations of the University held for conferring degrees and the meetings of the Court.

(4) Every proposal for the conferment of an honorary degree shall be subject to confirmation by the Chancellor.

The Pro-
Chancel-
lor.

1A. (1) The Pro-Chancellor shall be elected by the Court by a simple majority in accordance with the Regulations made by the Court.

(2) The Pro-Chancellor shall hold office for a term of three years and shall be eligible for re-election.

(3) Any casual vacancy in the office of the Pro-Chancellor shall be filled by the Chancellor on the recommendation of the Executive Council and the person so appointed shall hold office until the next annual meeting of the Court.

(4) The Pro-Chancellor shall, in the absence of the Chancellor, perform the functions of the Chancellor."

(iii) in Statute 2—

(a) for clauses (1) and (2), the following clause shall be substituted, namely :—

"(1) The Vice-Chancellor shall be appointed by the Visitor from a panel of at least three persons recommended by the Court from a panel of five persons recommended by the Executive Council:

Provided that if the Visitor does not approve of any of the persons so recommended, he may call for fresh recommendations and if the Court recommends another panel, the Visitor shall not have any right to call for fresh recommendations."

(b) in clause (4), the words "and shall not be eligible for re-appointment" shall be added at the end:

(iv) in Statute 3—

(a) clause (1) shall be renumbered as clause (1A) and before clause (1A) as so re-numbered, the following clause shall be inserted, namely:—

“(1) The Vice-Chancellor shall be the principal executive and academic officer of the University, and shall exercise general supervision and control over the affairs of the University and give effect to the decisions of all the authorities of the University.”;

(b) after clause (3), the following clause shall be inserted, namely:—

“(4) The Vice-Chancellor may, if he is of opinion that immediate action should be taken on any matter, he shall take such action as he deems necessary and report the same for confirmation at the next meeting of the authority which in the ordinary course would have dealt with the matter:

Provided that if the action taken by the Vice-Chancellor is not approved by the authority concerned, it may modify or reverse such action by a resolution passed by a majority of two-thirds of its total membership.”;

(v) after Statute 4, the following Statute shall be inserted, namely:—

“4A. (1) The Honorary Treasurer shall be elected by the Court by a simple majority in accordance with the Regulations made by the Court from a panel of names recommended by the Executive Council.

Hono-
rary
Treasurer

(2) The Honorary Treasurer shall hold office for a term of three years and shall be eligible for re-election for another term.

(3) The Honorary Treasurer shall hold office on such terms and conditions as may be prescribed by the Ordinances.

(4) The Honorary Treasurer shall be a member of the Finance Committee and shall exercise general supervision over the funds of the University.”;

(vi) in Statute 6, for clause (4), the following clause shall be substituted, namely:—

“(4) The Finance Officer shall advise the University as regards its financial policy and perform such other financial functions as may be assigned to him by the Executive Council or as may be prescribed by these Statutes or the Ordinances:

Provided that the Finance Officer shall not incur any expenditure or make any investment exceeding ten thousand rupees without the previous approval of the Executive Council.”;

(vii) in Statute 7—

(a) for clause (2), the following clause shall be substituted, namely:—

“(2) If at any time, there is no Professor in a Faculty, a Reader shall, by rotation according to seniority, be appointed as the Dean of the Faculty.”;

(b) in clause (5), after the words "a Professor", the words "or Reader" shall be inserted;

(c) in clause (6)—

(1) for the words "by such person as the Vice-Chancellor may appoint for the purpose", the words "by a Professor if there is one, or if there is no Professor, by a Reader, by rotation according to seniority" shall be substituted;

(2) the following proviso shall be added, namely:—

"Provided that no such Professor or Reader shall perform such duties for a continuous period of more than three years.";

(viii) for Statute 8, the following Statute shall be substituted, namely:—

Chairmen
of Depart-
ments.

"8. (1) Each Department shall have a Chairman, who shall be appointed by the Executive Council from amongst the Professors in the Department by rotation according to seniority and he shall hold such office for a period of three years:

Provided that in a Department where there is no Professor, the Chairman of the Department shall be appointed from amongst the Readers in that Department and in a Department where there is no Professor or Reader, the Chairman of the Department shall be appointed from amongst the Lecturers in that Department who have completed ten years of service.

(2) A Professor, Reader or Lecturer may decline the offer of appointment as the Chairman of a Department.

(3) Where the Chairman of a Department resigns his office or is by reason of illness, absence or any other cause, unable to perform the duties of his office, the duties of the office shall be performed by the next senior-most person in the Department until a new Chairman, or the existing Chairman, as the case may be, assumes office.";

(ix) Statute 9 shall be omitted;

(x) in Statute 13, for clause (2), the following clauses shall be substituted, namely:—

"(2) The Librarian shall be a member of the Board of Studies of the Department of Library Science.

(3) The Librarian shall exercise such powers and perform such duties as may be assigned to him by the Executive Council.";

(xi) for Statute 14, the following Statute shall be substituted, namely:—

Court

"14. (1) The Court shall consist of the following members, namely:—

Ex-officio members

(i) Chancellor;

(ii) Pro-Chancellor;

- (iii) Vice-Chancellor;
- (iv) Pro-Vice-Chancellor;
- (v) Honorary Treasurer;
- (vi) All Ex-Vice-Chancellors;
- (vii) Librarian;
- (viii) Provosts;
- (ix) Proctor;

Representatives of the Departments and Colleges

- (x) Chairmen of Departments;
- (xi) Principals of Colleges;
- (xii) Professors who are not Chairmen of Departments;

*Representatives of teachers other than Chairmen of Departments,
Principals of Colleges and Professors*

- (xiii) Two Readers, by rotation according to seniority;
- (xiv) Three Lecturers, by rotation according to seniority;

Representatives of ex-students

- (xv) Ten representatives of ex-students to be elected by the Alumni (Old Boys') Association;

Representatives of donors

- (xvi) Ten representatives of donors who have donated at least a sum of ten thousand rupees or transferred property worth at least ten thousand rupees to be elected from amongst themselves;

Representatives of learned professions, industry and commerce

- (xvii) Ten persons representing the learned professions to be elected by the Court, of whom at least five shall be persons residing outside the State of Uttar Pradesh;
- (xviii) Five persons representing industry and commerce, to be elected by the Court;

Representatives of the All-India Muslim Educational Conference

- (xix) Three representatives of the All-India Muslim Educational Conference;

Representatives of Parliament

- (xx) Five members of Parliament, three to be elected by the House of the People (Lok Sabha) from amongst its members and two to be elected by the Council of States (Rajya Sabha) from amongst its members;

Representatives of Muslim culture and learning

- (xxi) Five persons representing Muslim culture and learning, to be elected by the Court;

Nominated persons

(xxii) Not more than five persons to be nominated by the Visitor;

(xxiii) Not more than two persons to be nominated by the Rector;

(xxiv) Not more than three persons to be nominated by the Chancellor;

Provided that in making nominations under items (xxii) to (xxiv), due regard shall be had to the representation of the different areas of the country in view of the all-India character of the University;

Provided further that no employee of the University shall be eligible to be a member under items (xv) to (xxiv).

(2) All the members of the Court, other than *ex-officio* members, shall hold office for a term of three years and an *ex-officio* member shall cease to be a member of the Court as soon as he vacates the office by virtue of which he is such a member.”;

(xii) in Statute 15—

(a) for clause (3), the following clause shall be substituted, namely:—

“(3) One-third of the members of the Court shall form a quorum for a meeting of the Court.”;

(b) in the proviso to clause (4), for the words “thirty-five members”, the words “one-third of the members” shall be substituted;

(xiii) for Statute 16, the following Statute shall be substituted, namely:—

“16. (1) The Executive Council shall consist of the following members, namely:—

(i) Vice-Chancellor;

(ii) Pro-Vice-Chancellor;

(iii) Honorary Treasurer;

(iv) Three Deans of Faculties, by rotation according to seniority;

(v) Two Principals of Colleges, other than the Principal of the Women's College, by rotation according to seniority;

(vi) Principal of the Women's College;

(vii) One Provost, by rotation according to seniority;

(viii) Proctor;

(ix) Five members of the Court, none of whom shall be an employee of the University to be elected by it, of whom at least three shall be persons residing outside the State of Uttar Pradesh;

Provided that until such persons are elected by the Court, the Visitor shall nominate such members;

(x) Three representatives of teachers, at least one of whom shall be a Reader, to be elected from amongst themselves;

Execu.
tive
Council.

- (xi) Two persons to be nominated by the Visitor;
- (xii) One person to be nominated by the Rector;
- (xiii) One person to be nominated by the Chancellor:

Provided that no employee of the University shall be eligible for nomination under items (xi) to (xiii).

(2) All the members of the Executive Council other than *ex-officio* members shall hold office for a term of three years.

(3) Thirteen members of the Executive Council shall form a quorum for a meeting of the Executive Council.”;

(xiv) in Statute 18—

(a) in clause (1)—

(1) in item (iv), for the word “Heads”, the word “Chairmen” shall be substituted;

(2) item (vii) shall be omitted;

(3) for item (ix), the following item shall be substituted, namely:—

“(ix) Fifteen teachers consisting of two Professors, five Readers and eight Lecturers, to be elected by the teachers from amongst themselves.”;

(4) after item (xii), the following item shall be inserted, namely:—

“(xiii) Five students of whom three shall be the President, Vice-President and the Honorary Secretary of the Students’ Union and two shall be elected by the students from amongst themselves, in accordance with the rules to be laid down by the Students’ Union:

Provided that no student who has passed the High School or any equivalent examination more than eight years earlier or the Pre-University or equivalent examination more than seven years earlier or, has taken more than one year in excess of the period prescribed for the course for which he is a student, shall be eligible for election as a member of the Academic Council:

Provided further that no student member of the Academic Council shall participate in the discussions in respect of matters relating to examinations, Selection Committees, appointment and conditions of service of the teaching staff.”;

(b) in clause (2), after the words “*ex-officio* members”, the words “and student members” shall be inserted;

(c) after clause (2), the following clause shall be inserted, namely:—

“(2A) The student members shall hold office for a period of one year or so long as they continue to be the office bearers of the Students’ Union or, as the case may be, students of the University whichever is earlier.”;

(xv) in Statute 20—

(a) in sub-clause (e) of clause (2), for the word "Head", the word "Chairman" shall be substituted;

(b) in clause (3),—

(1) after item (viii) and before the provisos, the following items and proviso shall be inserted, namely:—

"(ix) Principal, A. K. Tibbia College shall be a member of the Faculty of Medicine;

(x) two students, to be elected from each Faculty—

(a) by the post-graduate students in all the Faculties, other than the Faculties of Engineering and Technology and Medicine from amongst themselves; and

(b) by the final year and post-graduate students in the Faculties of Engineering and Technology and Medicine from amongst themselves:

Provided that no student member of a Faculty shall participate in the discussions in respect of matters relating to—

(i) the appointment of examiners;

(ii) the creation, abolition or upgradation of teaching posts;

(iii) the field of study of each post at the time of its creation;

(iv) the appointment of Supervisors of Research;
or

(v) the allocation of teaching work amongst the teachers.";

(2) in the first proviso, for the words "Provided that", the words "Provided further that" shall be substituted;

(3) in the second proviso, for the words "Provided further that" the words "Provided also that" shall be substituted;

(c) in clause (5), after the words "*ex-officio* members", the words "and student members" shall be inserted;

(d) after clause (5), the following clause shall be inserted, namely:—

"(5A) The student members shall hold office for a period of one year or so long as they continue to be students of the University whichever is earlier.";

(xvi) in Statute 22—

(a) in clause (1), after item (v), the following item shall be inserted, namely:—

"(vi) Two students to be elected by the post-graduate and research students of the Department from amongst themselves.";

(b) after clause (2), the following clause shall be inserted, namely:—

“(2A) The members referred to in item (vi) shall hold office for a period of one year or so long as they continue to be students of the University whichever is earlier.”;

(c) in clause (3)—

(1) in item (a).—

(A) in sub-item (ii), for the words “, but excluding research degrees”, the words “and research degrees” shall be substituted;

(B) in sub-item (v), the words “, including allocation and utilisation of funds” shall be added at the end;

(2) before the proviso, the following proviso shall be inserted, namely:—

“Provided that no student member shall participate in the functions referred to in sub-items (ii), (iii), (iv) and (vii) of item (a): ”;

(3) in the existing proviso, for the words “Provided that”, the words “Provided further that” shall be substituted;

(xvii) Statutes 24 and 25 shall be omitted;

(xviii) in Statute 26, for clause (1), the following clause shall be substituted, namely:—

“(1) The Finance Committee shall consist of the following members, namely:—

(i) Vice-Chancellor;

(ii) Pro-Vice-Chancellor;

(iii) Honorary Treasurer;

(iv) Three persons to be nominated by the Visitor;

(v) Two persons who are not employees of the University out of whom at least one shall be a person who is not a member of the Executive Council, to be elected by the Court.”;

(xix) in Statute 28, the words “standing or” shall be omitted;

(xx) in clause (1) of Statute 30—

(a) the words “and, in accordance with such other principles as the Executive Council may from time to time prescribe” shall be omitted;

(b) the following Explanation shall be added at the end, namely:—

“Explanation.—For the purpose of determining the continuous service of a person in a grade or post, the period for which such person has held a post in that grade or post in an officiating or temporary capacity immediately before

the date on which he is appointed to it substantively, shall be taken into account.”;

(xxi) after Statute 31, the following Statutes shall be inserted, namely:—

Students'
Union.

“32. (1) There shall be a Students' Union for the University.

(2) Every student of the University shall be deemed to be a member of the Students' Union.

(3) The constitution, powers and functions of the Students' Union shall be such as may be prescribed by the Ordinances.

Teachers'
Associa-
tion.

33. (1) There shall be a Teachers' Association for the University.

(2) The constitution of the Teachers' Association shall be such as may be prescribed by the Ordinances.

Other
Associa-
tions.

34. (1) There shall be staff associations for the following categories of staff of the University, namely:—

(i) Administrative and ministerial;

(ii) Technical;

(iii) Class IV;

(iv) School teachers.

(2) The constitution of the staff associations referred to in clause (1) shall be such as may be prescribed by the Ordinances.”.

Transi-
tional
provi-
sions.

23. (1) The Court, the Executive Council and the Finance Committee of the Aligarh Muslim University shall, as soon as may be, after the commencement of this Act, be constituted in accordance with the provisions of the principal Act and of the Statutes, as amended by this Act, and until the Court, the Executive Council or the Finance Committee is so constituted, the Court, the Executive Council or the Finance Committee functioning immediately before such commencement, shall continue to exercise all the powers and perform all the functions under the principal Act, as so amended.

(2) The Chancellor and the Pro-Chancellor shall, as soon as may be, after the commencement of this Act, be elected in accordance with the provisions of the principal Act and of the Statutes, as amended by this Act, and the person holding any such office immediately before such commencement, shall continue to hold that office until his successor enters upon his office.

(3) The Vice-Chancellor and the Pro-Vice-Chancellor and the Heads of Departments of the Aligarh Muslim University holding office immediately before the commencement of this Act shall, on and from such commencement, hold their respective offices by the same tenure and upon the same terms and conditions as they held it immediately before such commencement.

24. Anything done, any action taken or any degree or other academic distinction conferred by the Aligarh Muslim University before the commencement of this Act shall, notwithstanding any change made by this Act in the constitution of the Court or the Executive Council, be valid as if such thing was done, action was taken, or degree or academic distinction was conferred under the provisions of the principal Act, as amended by this Act.

Saving.

STATEMENT OF OBJECTS AND REASONS

Ever since the Aligarh Muslim University Act was amended in 1965 and 1972, there had been a controversy amongst a large section of the Muslims about the changes brought about by these amending Acts. It had been represented that these amending Acts affected the basic character of the University and abridged its autonomy.

2. There had also been persistent demands both inside and outside Parliament for the restoration of the basic character of the University and its democratic functioning. The Executive Council of the University itself appointed a Committee, consisting of representatives of varied interests to make suggestions in this regard. The report of the Committee was submitted to the Government in April, 1977.

3. In the light of the recommendations of the aforesaid Committee and also of a Committee appointed before the enactment of the amending Act of 1972 (known as the Beg Committee), and having regard to the strong feelings among a large section of the Muslims of India and the staff and students of the University, the amendments made by the amending Acts of 1965 and 1972 have been reviewed and it has been decided that the position which obtained in the University as a result of the Aligarh Muslim University (Amendment) Act, 1951 (62 of 1951) should be substantially restored, with such modifications as have become necessary on account of passage of time.

4. The main features of this Bill are as follows:—

(i) Omission of the words "establish and" from the preamble to the Act;

(ii) Amendment of the definition of the expression "University" occurring in the Act so as to indicate that the educational institution which originated as the Muhammadan Anglo-Oriental College, Aligarh, established by the Muslims of India, was incorporated as a University by the Act in 1920;

(iii) Empowering the University to promote especially the educational and cultural advancement of the Muslims of India;

(iv) Restoration of the status of the supreme governing body of the University to the Court with power to make Statutes of the University;

(v) Restoration of the position that obtained immediately after the amending Act of 1951 with respect to the composition of the Court, the Executive Council and the Finance Committee of the University;

(vi) Restoration of the office of the Honorary Treasurer;

(vii) Change in the procedure of appointment of the Vice-Chancellor of the University;

(viii) Participation of the students in the academic bodies of the University.

NEW DELHI;
The 6th May, 1978.

PRATAP CHANDRA CHUNDER.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 18 of the Bill which proposes to substitute a new section for section 28 of the Aligarh Muslim University Act, 1920, enables the Court of the University to make new or additional Statutes of the University or to amend or repeal such Statutes. The matters in respect of which the Court may exercise this power relate to the constitution, powers and functions of the authorities of the University, the manner of appointment or election, of the Chancellor, the Pro-Chancellor, the Vice-Chancellor and other officers of the University, the manner of appointment of teachers and other employees of the University and other matters.

2. The above matters pertain to matters of procedure or detail and as such the delegation of legislative power is of a normal character.

Bill No. 83 of 1978

A Bill to provide for the authorised Hindi translation of Acts passed by the Legislative Assemblies of Union territories and of Ordinances promulgated by the Administrators of Union territories and for the optional use of Hindi or the official languages of Union territories for certain purposes in the High Courts having their principal seats in the Union territories.

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

Short title and commencement. 1. (1) This Act may be called the Union Territories (Use of Hindi and Other Languages) Act, 1978.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different Union territories and for different provisions of this Act.

2. In this Act, unless the context otherwise requires,—

Definitions. (a) "Administrator" means the Administrator of a Union territory appointed by the President under article 239 of the Constitution;

(b) "appointed day", in relation to a Union territory and any provision of this Act, means the day on which that provision comes into force in that Union territory;

(c) "Hindi" means Hindi in Devanagari script;

(d) "Union territory" means a Union territory having a Legislative Assembly and includes the Union territory of Delhi.

3. Where the Acts passed by the Legislative Assembly of a Union territory or the Ordinances promulgated by the Administrator of a Union territory are in a language other than Hindi, a translation of the same in Hindi may be published on or after the appointed day under the authority of the Administrator of the Union territory in the Official Gazette of that Union territory and in such a case, the translation in Hindi of any such Act or Ordinance shall be deemed to be the authoritative text thereof in the Hindi language.

Authorised Hindi translation of Acts passed by the Legislative Assemblies of Union territories and Ordinances promulgated by the Administrators in certain cases.

4. (1) As from the appointed day or any day thereafter, the President may authorise the use of Hindi or the official language of the Union territory in proceedings in the High Court for that Union territory and having its principal seat in that Union territory.

Optional use of Hindi or other official language in judgments, etc.

(2) As from the appointed day or any day thereafter, the President may authorise the use of Hindi or the official language of the Union territory, in addition to the English language, for the purposes of any judgment, decree or order passed or made by the High Court for that Union territory and having its principal seat in that Union territory and where any judgment, decree or order is passed or made in any such language (other than the English language), it shall be accompanied by a translation of the same in the English language issued under the authority of the High Court.

Explanation.—In this section, the expression "High Court" includes the Court of the Judicial Commissioner for the Union territory of Goa, Daman and Diu.

STATEMENT OF OBJECTS AND REASONS

Under article 348(2) of the Constitution, read with section 7 of the Official Languages Act, 1963, the Governor of a State may, with the previous consent of the President, authorise the use of Hindi or the official language of the State, in addition to the English language, for the purpose of any proceedings, judgments, etc., of the High Court of that State. Similarly, section 6 of the Official Languages Act, 1963 provides that where the Legislature of a State has prescribed any language, other than Hindi, for use in Acts passed by the Legislature of the State or in Ordinances promulgated by the Governor of the State, a translation of the same in Hindi, in addition to a translation thereof in the English language, as required by clause (3) of article 348 of the Constitution, may be published under the authority of the Governor of the State in the Official Gazette of that State and in such a case, the translation in Hindi of any such Act or Ordinance shall be deemed to be the authoritative text thereof in the Hindi language. These provisions are inapplicable to the Union territories as reference to the Governor in these provisions will not include the Administrator of a Union territory. It is, therefore, proposed to enact separate legislation, on the lines of sections 6 and 7 of the Official Languages Act, 1963, to provide for the authorised Hindi translation of Acts passed by the Legislative Assemblies of Union territories and Ordinances promulgated by the Administrators of Union territories and for the optional use of Hindi or the official language of a Union territory for certain purposes in the High Court having its principal seat in the Union territory.

The Bill seeks to give effect to the above objects.

NEW DELHI;

DHANIK LAL MANDAL.

The 24th April, 1978.

FINANCIAL MEMORANDUM

Clause 3 of the Bill seeks to provide for publication in the Official Gazette of a translation in Hindi of the Acts passed by the Legislative Assembly of a Union territory or the Ordinances promulgated by the Administrator of a Union territory, in a language other than Hindi. Similarly clause 4 of the Bill provides for the use of Hindi or the Official Language of the Union territory in proceedings and for purposes of any judgment, decree or order passed or made by the High Court of a Union territory. This is likely to involve some recurring expenditure but it is not possible at present to indicate the amount of such expenditure.

No non-recurring expenditure is likely to be involved.

Bill No. 84 of 1978.

A Bill to provide for the inclusion in, and the exclusion from, the lists of Scheduled Castes and Scheduled Tribes, of certain castes and tribes.

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

Short
title.

1. This Act may be called the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1978.

Amend-
ment of
the Consti-
tution
(Schedul-
ed Castes)
Order,
1950.

2. In the Constitution (Scheduled Castes) Order, 1950, in the Schedule,—

(a) under the heading "PART IV.—Gujarat"—

(i) in entry 4, for the words "Madig, Mochi," the word "Madig," shall be substituted;

(ii) after entry 21, the following entry shall be inserted, namely:—

“21A. Mochi (in Dangs district and Umbergaon taluk of Bulsar district)”;

(b) under the heading “PART VII —*Karnataka*”—

(i) in entry 63, for the words “Vankar Maru Vankar”, the words “Vankar, Maru Vankar” shall be substituted;

(ii) for entry 75, the following entry shall be substituted, namely:—

“75. Mashti”.

3. In the Constitution (Scheduled Tribes) Order, 1950, in the Schedule,—

Amend-
ment of
the Consti-
tution
(Schedul-
ed Tribes)
Order,
1950.

(a) under the heading “PART I.—*Andhra Pradesh*”, in entry 20, for the words “Medak Nalgonda”, the words “Medak, Nalgonda” shall be substituted;

(b) under the heading “PART II.—*Assam*”, under the sub-heading “I. In the autonomous districts:—”, for entry 14, the following entry shall be substituted, namely:—

“14. Synteng.”;

(c) under the heading “PART IX.—*Maharashtra*”, in entry 18, for the words “Gond Rajgond” the words “Gond. Rajgond” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

Prior to the enforcement of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (108 of 1976), the 'Mochi' community in Gujarat was specified as a Scheduled Caste only in the Dangs district and Umbergaon taluka of the present Bulsar district and for the rest of the State, it was not listed as a Scheduled Caste. By the above Act, the area restrictions within a State have generally been removed and, as such, the 'Mochi' community was declared as a Scheduled Caste for the whole of the State of Gujarat.

2. The Government of Gujarat have represented that removal of area restrictions in the case of Mochi community is not justified because this community has never suffered from any disability arising out of the practice of untouchability in any part of Gujarat State, except the Dangs district and Umbergaon taluka of the present Bulsar district. It has also been pointed out that Mochis elsewhere in the State being comparatively more advanced, are likely to take away the benefits which ought to go to the members of this community residing in Dangs district and Umbergaon taluka. The present Bill, therefore, seeks to restore the position in respect of the Mochi community in the list of Scheduled Castes of Gujarat State which obtained prior to the enforcement of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976.

3. Certain mistakes of spellings and punctuations in the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, have been noticed and these are also proposed to be corrected.

4. The proposed amendments in the lists of Scheduled Castes and Scheduled Tribes **will not affect** the number of seats reserved for the Scheduled Castes and Scheduled Tribes either in the Lok Sabha or in the State Assemblies and, therefore, no provision has been included in the Bill to re-estimate the population of the Scheduled Castes and Scheduled Tribes **and to re-allocate** the reserved constituencies.

DHANIK LAL MANDAL.

NEW DELHI;

The 27th April, 1978.

Bill No. 86 of 1978

A Bill to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property and affairs and for matters connected therewith or incidental thereto.

Enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

CHAPTER I**PRELIMINARY**

1. (1) This Act may be called the Mental Health Act, 1978.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different States and for different provisions of this Act, and any reference in any provision to the commencement of this Act in a State shall be construed as a reference to the coming into force of that provision in that State.

2. In this Act, unless the context otherwise requires,—

(a) "cost of maintenance", in relation to a mentally ill person admitted in a psychiatric hospital or psychiatric nursing home, shall mean the cost of such items as the State Government may, by gene-

Short title,
extent
and com-
mence-
ment.

Defini-
tions.

ral or special order, specify in this behalf, and shall, unless the State Government otherwise directs, include—

(i) the cost of lodging, boarding, clothing, medicine or any other amenity provided to such person in any psychiatric hospital or psychiatric nursing home and the expenditure for his treatment and care therein; and

(ii) the expenditure incurred for removing such person to, or from, any psychiatric hospital or psychiatric nursing home;

(b) "District Court" means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which the State Government may, by notification, specify as the court competent to deal with all or any of the matters specified in this Act;

(c) "Inspecting Officer" means a person authorised by the State Government or by the licensing authority to inspect any psychiatric hospital or psychiatric nursing home;

(d) "licence" means a licence granted under section 6;

(e) "licensee" means the holder of a licence;

(f) "licensed psychiatric hospital" or "licensed psychiatric nursing home" means a psychiatric hospital or psychiatric nursing home, as the case may be, licensed, or deemed to be licensed, under this Act;

(g) "licensing authority" means such officer or authority as may be specified by the State Government to be the licensing authority for the purposes of this Act;

(h) "Magistrate" means,—

(1) in relation to a metropolitan area within the meaning of clause (k) of section 2 of the Code of Criminal Procedure, 1973, a Metropolitan Magistrate;

2 of 1974.

(2) in relation to any other area, the Chief Judicial Magistrate, Sub-Divisional Magistrate or such other Magistrate of the first class as the State Government may, by notification, empower to perform the functions of a Magistrate under this Act;

(i) "medical officer" means a gazetted medical officer in the service of Government and includes a medical practitioner declared, by a general or special order of the State Government, to be a medical officer for the purposes of this Act;

(j) "medical officer in charge", in relation to any psychiatric hospital or psychiatric nursing home, means the medical officer who, for the time being, is in charge of that hospital or nursing home;

(k) "medical practitioner" means a person who possesses a recognised medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956, and whose name has been entered in a State Medical Register in accordance with the provisions of that Act or a person whose name has been registered in a State Medical Register in accordance with the provisions of any other law relating to the registration of medical practitioners for the time being in force;

102 of 1956.

(l) "mentally ill offender" means a mentally ill person for whose detention in, or removal to, a psychiatric hospital, psychiatric nursing home, jail or other place of safe custody, an order referred to in section 30 has been made;

(m) "mentally ill person" means a person who is in need of psychiatric treatment by reason of mental disorder or mental deficiency or of any disturbance in his behaviour or mental state and includes a person who has all or any of the clinical conditions known as psychoses, psychoneuroses, psychopathic state, addition, mental sub-normality or psychosomatic disorder, or such other condition of the like nature as may be prescribed;

(n) "minor" means a person who has not completed the age of eighteen years;

(o) "notification" means a notification published in the Official Gazette;

(p) "prescribed" means prescribed by rules made under this Act;

(q) "psychiatric hospital" or "psychiatric nursing home" means a hospital or, as the case may be, a nursing home established or maintained by the Government or any other person for the treatment and care of mentally ill persons and includes a convalescent home established or maintained by the Government or any other person for such mentally ill persons;

(r) "psychiatrist" means a medical practitioner possessing a post-graduate degree or diploma in psychiatry, recognised by the Medical Council of India, constituted under the Indian Medical Council Act, 1956, and includes, in relation to any State, any other person who, having regard to his knowledge and experience in psychiatry, has been declared by the Government of that State to be a psychiatrist for the purposes of this Act;

(s) "reception order" means an order made under the provisions of this Act for the admission and detention of a mentally ill person in a psychiatric hospital or psychiatric nursing home;

(t) "relative" includes any person related to the mentally ill person by blood, marriage or adoption;

(u) "State Government" in relation to a Union territory means the Administrator thereof;

(v) "temporary treatment order" means a temporary treatment order passed by a Magistrate under section 20 or section 21.

CHAPTER II

PSYCHIATRIC HOSPITALS AND PSYCHIATRIC NURSING HOMES

3. (1) The Central Government may, in any part of India, or the State Government may, within the limits of its jurisdiction, establish or maintain psychiatric hospitals or psychiatric nursing homes for the admission, treatment and care of mentally ill persons at such places as it thinks fit; and separate psychiatric hospitals and psychiatric nursing homes may be established or maintained for,—

(a) those who are under the age of eighteen years;

(b) those who have been convicted of any offence; and

Establishment or maintenance of psychiatric hospitals and psychiatric nursing homes,

(c) those belonging to such other class or category of persons as may be prescribed.

(2) Where a psychiatric hospital or psychiatric nursing home is established or maintained by the Central Government, any reference in this Act to the State Government shall, in relation to such hospital or nursing home, be construed as a reference to the Central Government.

Establishment or maintenance of psychiatric hospitals or psychiatric nursing homes only with licence.

4. (1) On and after the commencement of this Act, no person shall establish or maintain a psychiatric hospital or psychiatric nursing home unless he holds a valid licence granted to him under this Act:

Provided that an asylum, licensed by the Central Government or any State Government and maintained as such immediately before the commencement of this Act, may continue to be maintained, and shall be deemed to be a licensed psychiatric hospital or licensed psychiatric nursing home, as the case may be, under this Act,—

(a) for a period of three months from such commencement, or

(b) if an application made in accordance with section 5 for a licence is pending on the expiry of the period specified in clause (a), till the disposal of such application.

(2) Nothing contained in sub-section (1) shall apply to a psychiatric hospital or psychiatric nursing home established or maintained by the Central Government or State Government.

Application for licence.

5. (1) Every person, who holds, at the commencement of this Act, a valid licence authorising him to establish or maintain any psychiatric hospital or psychiatric nursing home, shall, if he intends to establish or continue the maintenance of such hospital or nursing home after the expiry of the period referred to in clause (a) of the proviso to sub-section (1) of section 4, make, at least one month before the expiry of such period, an application to the licensing authority for the grant of a fresh licence for the establishment or maintenance of such hospital or nursing home, as the case may be.

(2) A person, who intends to establish or maintain, after the commencement of this Act, a psychiatric hospital or psychiatric nursing home, shall, unless he already holds a valid licence, make an application to the licensing authority for the grant of a licence.

(3) Every application under sub-section (1) or under sub-section (2) shall be in such form and be accompanied by such fee as may be prescribed.

Grant or refusal of licence.

6. On receipt of an application under section 5, the licensing authority shall make such inquiries as it may deem fit and where it is satisfied that—

(a) the establishment or maintenance of the psychiatric hospital or psychiatric nursing home or the continuance of the maintenance of any such hospital or nursing home established before the commencement of this Act is necessary, having regard to the needs of the area in which such hospital or nursing home is proposed to be established or maintained or continued to be maintained;

(b) the applicant is in a position to provide the minimum facilities prescribed for the admission, treatment and care of mentally ill persons; and

(c) the psychiatric hospital or the psychiatric nursing home, will be under the charge of a medical officer who is a psychiatrist,

it shall grant a licence to the applicant in the prescribed form, and, where it is not so satisfied, the licensing authority shall, by order, refuse to grant the licence applied for:

Provided that, before making any order refusing to grant a licence, the licensing authority shall give to the applicant a reasonable opportunity of being heard and every order of refusal to grant a licence shall set out therein the reasons for such refusal and such reasons shall be communicated to the applicant in such manner as may be prescribed.

7. A licence shall not be transferable or heritable.

Licence
not trans-
ferable or
heritable.

8. Every licence shall, unless revoked earlier under section 11, be valid for a period of five years from the date on which it is granted.

Duration
of licence.

9. A licence may be renewed, from time to time, on an application made in that behalf to the licensing authority, in such form and accompanied by such fee, as may be prescribed, and every such application shall, as far as possible, be made one year before the date on which the period of validity of the licence is due to expire:

Renewal
of licence.

Provided that the renewal of a licence shall not be refused unless the licensing authority is satisfied that—

(i) having regard to the needs of the area, renewal of the licence is not necessary; or

(ii) the licensee is not in a position to provide in a psychiatric hospital or psychiatric nursing home, the minimum facilities prescribed for the admission, treatment and care therein of mentally ill persons; or

(iii) the licensee is not in a position to provide a medical officer who is a psychiatrist to take charge of the psychiatric hospital or the psychiatric nursing home; or

(iv) the licensee has contravened any of the provisions of this Act or any rule made thereunder.

10. Every licensee shall maintain the psychiatric hospital or psychiatric nursing home in such manner and subject to such conditions as may be prescribed.

Licensed
to main-
tain psychi-
atric
hospital
and psychi-
atric nur-
sing home
in accord-
ance with
pres-
cribed
condi-
tions.

Revoca-
tion of
licence.

11. (1) The licensing authority may, without prejudice to any other penalty that may be imposed on the licensee, by order in writing, revoke the licence if it is satisfied that—

(a) the psychiatric hospital or the psychiatric nursing home is not being maintained by the licensee in accordance with the provisions of this Act or the rules made thereunder; or

(b) the maintenance of the psychiatric hospital or psychiatric nursing home is being carried on in a manner detrimental to the moral and physical well-being of the inpatients thereof;

Provided that no such order shall be made except after giving the licensee a reasonable opportunity of being heard, and every such order shall set out therein the grounds for the revocation of the licence and such grounds shall be communicated to the licensee in such manner as may be prescribed.

(2) Every order made under sub-section (1) shall contain a direction that the inpatients of the psychiatric hospital or psychiatric nursing home shall be transferred to such other psychiatric hospital or psychiatric nursing home as may be specified in that order.

(3) Every order made under sub-section (1) shall take effect,—

(a) where no appeal has been preferred against such order under section 12, immediately on the expiry of the period prescribed for such appeal; and

(b) where such appeal has been preferred and the same has been dismissed, from the date of the order of such dismissal.

Appeal.

12. (1) Any person, aggrieved by an order of the licensing authority refusing to grant or renew a licence, or revoking a licence, may, in such manner and within such period as may be prescribed, prefer an appeal to the State Government:

Provided that the State Government may entertain an appeal preferred after the expiry of the prescribed period if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) Every appeal under sub-section (1) shall be made in such form and be accompanied by such fee as may be prescribed.

Inspection
of psychi-
atric
hospitals
and psychi-
atric
nursing
homes
and
visiting
of patients.

13. (1) An Inspecting Officer may, at any time, enter and inspect any psychiatric hospital or psychiatric nursing home and require the production of any records, which are required to be kept in accordance with the rules made in this behalf, for inspection:

Provided that such inspection shall be carried out in the presence of the medical officer in charge or of any other person authorised by him.

(2) The Inspecting Officer may interview in private any patient receiving treatment and care therein—

(a) for the purpose of inquiring into any complaint made by or on behalf of such patient as to the treatment and care, or

(b) in any case, where the Inspecting Officer has reason to believe that any inpatient is not receiving proper treatment and care, and where the Inspecting Officer is a medical practitioner, he may also examine the patient in private and may require the production of any medical records relating to the treatment and care of the patient in the psychiatric hospital or psychiatric nursing home and inspect the same.

(3) Where the Inspecting Officer is satisfied that any inpatient in a psychiatric hospital or psychiatric nursing home is not receiving proper treatment and care, he may report the matter to the licensing authority and thereupon the licensing authority may issue such directions as it may deem fit to the licensee of the psychiatric hospital, or, as the case may be, the psychiatric nursing home and every such licensee shall be bound to comply with such directions.

14. Provision shall be made in every licensed psychiatric hospital or licensed psychiatric nursing home for such facilities as may be prescribed for the treatment of every mentally ill person, whose condition does not warrant his admission as an inpatient or who, for the time being, is not undergoing treatment as inpatient.

Treat-
ment
of out-
patients.

CHAPTER III

ADMISSION AND DETENTION IN PSYCHIATRIC HOSPITAL OR PSYCHIATRIC NURSING HOME

PART I

Admission on voluntary basis

15. (1) Any person (not being a minor), who considers himself to be a mentally ill person and desires to be admitted to any psychiatric hospital or psychiatric nursing home for treatment, may make an application in that behalf to the medical officer in charge for being admitted as a voluntary patient.

Applica-
tion for
admission
as volun-
tary pa-
tient.

(2) Where the guardian of a minor considers his ward to be a mentally ill person and desires the ward to be admitted to any psychiatric hospital or psychiatric nursing home for treatment, he may make an application in that behalf to the medical officer in charge for admitting the ward as a voluntary patient.

(3) On receipt of an application under sub-section (1) or sub-section (2), the medical officer in charge shall make such inquiries as he may deem fit and if satisfied that the applicant or, as the case may be, the minor requires treatment as an inpatient in the psychiatric hospital or psychiatric nursing home, he may admit therein such applicant or, as the case may be, the minor as a voluntary patient.

16. (1) Save as otherwise provided in sub-section (2), every voluntary patient, who is admitted to any licensed psychiatric hospital or licensed psychiatric nursing home, shall be liable to pay the cost of maintenance to the licensee of the hospital or nursing home; and, in the case of a voluntary patient who is a minor, such cost shall be paid by his guardian.

Cost of
main-
tenance of
voluntary
patients.

(2) The State Government may, having regard to the nature of any licensed psychiatric hospital established or maintained by that Government and the means of the voluntary patients, provide, by notification, that any class or category of voluntary patients admitted to any such licensed psychiatric hospital or class of such hospitals, shall not be liable to pay the cost of maintenance, and, in every such case, the cost of maintenance of the voluntary patients shall be borne by the State Government.

Voluntary patients to abide by regulations of psychiatric hospitals or psychiatric nursing homes.

17. Every voluntary patient who is admitted to a licensed psychiatric hospital or licensed psychiatric nursing home shall be bound to abide by such regulations as may be made by the licensee of the psychiatric hospital or psychiatric nursing home wherein he is an inpatient.

Leave of absence or discharge of voluntary patients.

18. (1) The medical officer in charge of a psychiatric hospital or psychiatric nursing home shall, on an application made in that behalf by any voluntary patient, and, in the case of a minor voluntary patient, by the guardian of the patient, grant (unless such medical officer initiates action under sub-section (3) of section 20), within twenty-four hours of the receipt of such application, leave of absence to the patient for a period not exceeding thirty days at a time and not exceeding one hundred and eighty days in the aggregate or discharge the patient from the psychiatric hospital or psychiatric nursing home.

(2) Where a minor voluntary patient, who is admitted as an inpatient in any psychiatric hospital or psychiatric nursing home, attains majority, the medical officer in charge shall, as soon as may be, intimate the patient that he has attained majority and that, unless an application for his continuance as an inpatient is made by him within a period of one month of such intimation, he shall, subject to the provisions contained in section 19, be discharged, and if before the expiry of the said period, no application is made to the medical officer in charge for his continuance as an inpatient, he shall, on the expiry of the said period, be discharged.

PART II

Admission under special circumstances

Admission of mentally ill persons under certain special circumstances.

19. (1) Any mentally ill person who does not, or is unable to, express his willingness for admission as a voluntary patient, may be admitted and kept as an inpatient in a psychiatric hospital or psychiatric nursing home on an application made in that behalf by a relative of the mentally ill person if the medical officer in charge is satisfied that in the interests of the mentally ill person it is necessary so to do.

Provided that no person so admitted as an inpatient shall be kept in the psychiatric hospital or psychiatric nursing home as an inpatient for a period exceeding ninety days except in accordance with the other provisions of this Act.

(2) Every application under sub-section (1) shall be in the prescribed form and be accompanied by two medical certificates, from two medical practitioners (including a psychiatrist) of whom one shall be a medical

practitioner in the service of Government, to the effect that the condition of such mentally ill person is such that he should be kept under observation and treatment as an inpatient in a psychiatric hospital or psychiatric nursing home.

(3) Any mentally ill person admitted under sub-section (1) or his relative may apply to the Magistrate for his discharge and the Magistrate may, after giving notice to the person at whose instance he was admitted to the psychiatric hospital or psychiatric nursing home and after making such inquiry as he may deem fit either allow or dismiss the application.

(4) The provisions of the foregoing sub-sections shall be without prejudice to the powers exercisable by a Magistrate before whom the case of a mentally ill person is brought, whether under this section or under any other provision of this Act, to pass a temporary treatment order or a reception order, as the case may be, if he is satisfied that it is necessary so to do in accordance with the relevant provisions of this Act.

PART III

Temporary treatment orders

20. (1) Any relative or friend of a mentally ill person may make an application to the Magistrate within the local limits of whose jurisdiction such mentally ill person ordinarily resides for the admission of the mentally ill person to any psychiatric hospital or psychiatric nursing home for treatment for a temporary period.

Temporary
treat-
ment
orders.

(2) Every application under sub-section (1) shall be in the prescribed form and be accompanied by two medical certificates, from two medical practitioners (including a psychiatrist) of whom one shall be a medical practitioner in the service of Government, to the effect that the condition of such mentally ill person is such that he should be kept under observation and treatment as an inpatient in a psychiatric hospital or psychiatric nursing home.

(3) Where, before granting leave of absence or discharging a voluntary patient under section 18, the medical officer in charge of any psychiatric hospital or psychiatric nursing home is of opinion that the voluntary patient is likely to act in a manner which will be injurious to his health or will endanger his own life or the life of others, the medical officer in charge may make an application to the Magistrate within the local limits of whose jurisdiction the psychiatric hospital or the psychiatric nursing home is situate, for the detention of the patient in the psychiatric hospital or, as the case may be, psychiatric nursing home for further treatment.

(4) Where the medical officer in charge of any psychiatric hospital or psychiatric nursing home is of opinion that any mentally ill person undergoing treatment as an outpatient in that hospital or nursing home is likely to act in a manner which will be injurious to his health or will endanger his own life or the life of others, the medical officer in charge may make an application to the Magistrate within the local limits of whose jurisdiction the psychiatric hospital or the psychiatric nursing home is situate, for the detention of the patient in any psychiatric hospital or psychiatric nursing home for treatment as an inpatient.

(5) On receipt of an application under sub-section (1) or sub-section (3) or sub-section (4), the Magistrate may, after making such inquiries as he may deem fit, if satisfied that in the interests of the health and personal safety of the mentally ill person or for the protection of others, he should be detained as an inpatient in a psychiatric hospital or psychiatric nursing home, pass a temporary treatment order for the detention for treatment of such person in such psychiatric hospital or psychiatric nursing home and for such period not exceeding six months from the date of the order, as may be specified therein.

Discharge
of persons
detained
in psychi-
atric hos-
pital or
psychiatric
nursing
home
under
temporary
treatment
orders.

21. (1) Every mentally ill person detained for treatment in any psychiatric hospital or psychiatric nursing home under a temporary treatment order shall, on the expiry of the period of detention specified in the order, be discharged from such hospital or, as the case may be, nursing home:

Provided that where the period of detention specified in the temporary treatment order is less than six months and the medical officer in charge is of opinion that the treatment of such person as an inpatient should be continued beyond the period specified in that order, he may before the expiry of the said period, make an application for the extension of the period to the Magistrate within the local limits of whose jurisdiction the psychiatric hospital or, as the case may be, psychiatric nursing home is situate.

(2) On receipt of an application under sub-section (1), the Magistrate shall deal with it in the manner specified in sub-section (5) of section 20; so, however, that the period of further detention together with the period specified in the temporary treatment order made under the said sub-section (5), shall not exceed in the aggregate six months.

PART IV

Reception orders

A.—Reception orders on applications

Applica-
tion for
reception
order.

22. (1) An application for a reception order may be made by—

(a) the medical officer in charge of a psychiatric hospital or psychiatric nursing home, or

(b) by the husband, wife or any other relative of the mentally ill person.

(2) Where a medical officer in charge of a psychiatric hospital or psychiatric nursing home in which a mentally ill person is undergoing treatment under a temporary treatment order is satisfied that,—

(a) the mentally ill person is suffering from mental disorder of such a nature and degree that his treatment in the psychiatric hospital or, as the case may be, psychiatric nursing home is required to be continued for more than six months, or

(b) it is necessary in the interests of the health and personal safety of the mentally ill person or for the protection of others that

such person shall be detained in a psychiatric hospital or psychiatric nursing home, or

(c) a temporary treatment order would not be adequate in the circumstances of the case,

he may make an application to the Magistrate within the local limits of whose jurisdiction the psychiatric hospital or, as the case may be, psychiatric nursing home is situate, for the detention of such mentally ill person under a reception order in such psychiatric hospital or psychiatric nursing home, as the case may be.

(3) Subject to the provisions of sub-section (5), the husband or wife of a person who is alleged to be mentally ill or, where there is no husband or wife, or where the husband or wife is prevented by reason of any illness or absence from India or otherwise from making the application, any other relative of such person may make an application to the Magistrate within the local limits of whose jurisdiction the said person ordinarily resides, for the detention of the alleged mentally ill person under a reception order in a psychiatric hospital or psychiatric nursing home.

(4) Where the husband or wife of the alleged mentally ill person is not the applicant, the application shall contain the reasons for the application not being made by the husband or wife and shall indicate the relationship of the applicant with the alleged mentally ill person and the circumstances under which the application is being made.

(5) No person,—

(i) who is a minor, or

(ii) who, within fourteen days before the date of the application, has not seen the alleged mentally ill person,

shall make an application under this section.

(6) Every application under sub-section (3) shall be made in the prescribed form and shall be signed and verified in the prescribed manner and shall state whether any previous application had been made for inquiry into the mental condition of the alleged mentally ill person and shall be accompanied by two medical certificates from two medical practitioners (including a psychiatrist) of whom one shall be a medical practitioner in the service of Government.

23. Every medical certificate referred to in sub-section (6) of section 22 shall contain a statement,—

(a) that each of the medical practitioners referred to in that sub-section has personally examined the alleged mentally ill person;

(b) that in the opinion of each such medical practitioners the alleged mentally ill person is suffering from mental disorder of such a nature and degree as to warrant the detention of such person in a psychiatric hospital or psychiatric nursing home and that such detention is necessary in the interests of the health and personal safety of that person or for the protection of others; and

Form and
contents
of medical
certifi-
cates.

(c) that each such medical practitioner has formed his opinion on the basis of his observations and the observations of any other medical practitioner and from the particulars communicated to him by other persons.

Procedure
upon
applica-
tion for
reception
order.

24. (1) On receipt of an application under sub-section (2) of section 22, the Magistrate may make a reception order, if he is satisfied that—

(i) the mentally ill person is suffering from mental disorder of such a nature and degree that it is necessary to detain him in a psychiatric hospital or psychiatric nursing home for treatment; or

(ii) it is necessary in the interests of the health and personal safety of the mentally ill person or for the protection of others that he should be so detained, and a temporary treatment order would not be adequate in the circumstances of the case and it is necessary to make a reception order.

(2) On receipt of an application under sub-section (3) of section 22, the Magistrate shall consider the allegations made in the application and the evidence of mental illness as disclosed by the medical certificates.

(3) If the Magistrate considers that there are sufficient grounds for proceeding further, he shall personally examine the alleged mentally ill person unless, for reasons to be recorded in writing, he thinks that it is not necessary or expedient to do so.

(4) If the Magistrate is satisfied that a reception order may properly be made forthwith, he may make such order, and if the Magistrate is not so satisfied, he shall fix a date for further consideration of the application and may make such inquiries concerning the alleged mentally ill person as he thinks fit.

(5) The notice of the date fixed under sub-section (4) shall be given to the applicant and to any other person to whom, in the opinion of the Magistrate, such notice shall be given.

(6) If the Magistrate fixes a date under sub-section (4) for further consideration of the application, he may make such order as he thinks fit, for the proper care and custody of the alleged mentally ill person pending disposal of the application.

(7) On the date fixed under sub-section (4), or on such further date as may be fixed by the Magistrate, he shall proceed to consider the application *in camera*, in the presence of—

(i) the applicant;

(ii) the alleged mentally ill person (unless the Magistrate in his discretion otherwise directs);

(iii) the person who may be appointed by the alleged mentally ill person to represent him; and

(iv) such other person as the Magistrate thinks fit.

and if the Magistrate is satisfied that the alleged mentally ill person in relation to whom the application is made, is so mentally ill that in the

interests of the health and personal safety of that person or for the protection of others it is necessary to detain him in a psychiatric hospital or psychiatric nursing home for treatment, he may pass a reception order for that purpose and if he is not so satisfied, he shall dismiss the application and any such order may provide for the payment of the costs of the inquiry by the applicant personally or from out of the estate of the mentally ill person, as the Magistrate may deem appropriate.

(8) If any application is dismissed under sub-section (7), the Magistrate shall record the reasons for such dismissal and a copy of the order shall be furnished to the applicant.

B—Reception orders on production of mentally ill persons before Magistrate

25. (1) Every officer in charge of a police station,—

(a) may arrest or cause to be arrested any person found wandering at large within the limits of his station whom he has reason to believe to be so mentally ill as to be incapable of taking care of himself, and

(b) shall arrest or cause to be arrested any person within the limits of his station whom he has reason to believe to be dangerous by reason of mental illness.

Powers and duties of police officers in respect of certain mentally ill persons.

(2) No person arrested under sub-section (1) shall be detained in police custody without being informed, as soon as may be, of the grounds for such arrest, or where, in the opinion of the arresting officer, such person is not capable of understanding those grounds, without his relatives or friends, if any, being informed of such grounds.

(3) Every person, who is arrested and detained in custody under this section, shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate and shall not be detained in custody beyond the said period without the authority of the Magistrate.

26. (1) If a person is produced before a Magistrate under sub-section (3) of section 25, and if, in his opinion, there are sufficient grounds for proceeding further, the Magistrate shall,—

(a) examine the person to assess his capacity to understand,

(b) cause him to be examined by a medical officer, and

(c) make such inquiries in relation to such person as he may deem necessary.

Procedure on production of mentally ill person.

(2) After the completion of the proceedings under sub-section (1), the Magistrate may pass a reception order authorising the detention of the said person as an inpatient in a psychiatric hospital or psychiatric nursing home,—

(a) if the medical officer certifies such person to be a mentally ill person, and

(b) If the Magistrate is satisfied that the said person is a mentally ill person and that in the interests of the health and personal safety of that person or for the protection of others, it is necessary to pass such order:

Provided that if any friend or relative of the mentally ill person desires that the mentally ill person be sent to any particular licensed psychiatric hospital or licensed psychiatric nursing home for treatment therein and undertakes in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the mentally ill person in such hospital or nursing home, the Magistrate shall, if the medical officer in charge of such hospital or nursing home consents, make a reception order for the admission of the mentally ill person into that hospital or nursing home and detention therein:

Provided further that if any friend or relative of the mentally ill person enters into a bond, with or without sureties for such amount as the Magistrate may determine, undertaking that such mentally ill person will be properly taken care of and shall be prevented from doing any injury to himself or to others, the Magistrate may, instead of making a reception order, hand him over to the care of such friend or relative.

Order in
case
of mentally
ill person
cruelly
treated
or not
under
proper
care and
control.

27. (1) Every officer in charge of a police station, who has reason to believe that any person within the limits of his station is mentally ill and is not under proper care and control, or is ill-treated or neglected by any relative or other person having charge of such mentally ill person, shall forthwith report the fact to the Magistrate within the local limits of whose jurisdiction the mentally ill person resides.

(2) If it appears to the Magistrate, on the report of a police officer or on information derived from any other person, or otherwise, that any mentally ill person within the local limits of his jurisdiction is not under proper care and control, or is ill-treated or neglected by any relative or other person having the charge of such mentally ill person, the Magistrate may cause the mentally ill person to be produced before him, and summon such relative or other person who is, or who ought to be in charge of, such mentally ill person.

(3) If such relative or any other person is legally bound to maintain the mentally ill person, the Magistrate may, by order, require the relative or the other person to take proper care of such mentally ill person and where such relative or other person wilfully neglects to comply with the said order, he shall be punishable with fine which may extend to one thousand rupees.

(4) If there is no person legally bound to maintain the mentally ill person, or if the person legally bound to maintain the mentally ill person refuses or neglects to maintain such person, or if, for any other reason, the Magistrate thinks fit so to do, he may cause the mentally ill person to be produced before him and, without prejudice to any action that may be taken under sub-section (3), proceed in the manner provided in section 26 as if such person had been produced before him under sub-section (3) of section 25.

C.—Admission in emergencies

28. (1) Where any medical officer or medical practitioner or any friend or relative of a mentally ill person is of opinion that unless such mentally ill person is immediately admitted to any psychiatric hospital or psychiatric nursing home for treatment, the health and personal safety of such person or of others will be in imminent danger, he may make an application to the medical officer in charge of any psychiatric hospital or psychiatric nursing home for admission forthwith of such mentally ill person to the psychiatric hospital or, as the case may be, psychiatric nursing home under his charge.

Application
for admis-
sion of
mentally
ill persons
in emer-
gency

(2) Every application under sub-section (1) shall be in the prescribed form containing a statement that unless the mentally ill person is forthwith admitted to any psychiatric hospital or psychiatric nursing home, there is imminent danger to the health and personal safety of such person or of others, and shall be supported by a certificate to that effect in the prescribed form from a medical practitioner, and, wherever possible, from a medical practitioner who is acquainted with the condition of the mentally ill person.

Explanation.—For the removal of doubts it is hereby declared that where an application under sub-section (1) is made by a medical officer or medical practitioner such application shall be accompanied by a certificate referred to in this sub-section from another medical practitioner.

(3) On receipt of an application under sub-section (1), the medical officer in charge shall admit the mentally ill person to the psychiatric hospital or the psychiatric nursing home under his charge subject to the conditions that such mentally ill person shall be produced before a nearest Magistrate within the local limits of whose jurisdiction such hospital or nursing home is situate, within a period of seventy-two hours of such admission, excluding the time necessary for the journey from the place of admission to the court of the Magistrate and if it is necessary to continue treatment of the person as an inpatient beyond the period aforesaid, the authority of the Magistrate shall be obtained for such detention.

(4) Where due to the condition of the patient it is not possible to produce the mentally ill person before a Magistrate within the time set out under sub-section (3), the medical officer in charge shall request the Magistrate to visit the psychiatric hospital, or psychiatric nursing home, as the case may be, so as to enable him to comply with the provisions of sub-section (3) and the Magistrate shall comply with the request.

(5) The Magistrate may, if satisfied, on the basis of the medical certificate filed in support of an application under sub-section (1) and on the basis of such other inquiry as he may deem necessary, pass an order for the detention of the person for such period as may be specified in the order.

(6) Where the Magistrate is of opinion that it is necessary so to do, he may treat the application under sub-section (1), or any subsequent application that may be made for continuing the detention as if it were

an application for reception order under this Act and proceed to deal with it accordingly.

D—Further provisions regarding admission and detention of certain mentally ill persons

Admission as in-patient after inquisition.

29. If any District Court holding an inquisition under Chapter V regarding any person who is found to be mentally ill is of opinion that it is necessary so to do in the interests of such person, it may, by order, direct that such person shall be admitted and kept as an in patient in a psychiatric hospital or psychiatric nursing home and every such order may be varied from time to time or revoked by the District Court.

Admission and detention of mentally ill offender.

30. An order under section 30 of the Prisoners Act, 1900, or under section 144 of the Air Force Act, 1950, or under section 145 of the Army Act, 1950, or under section 143 or section 144 of the Navy Act, 1957, or under section 330 or section 335 of the Code of Criminal Procedure, 1973 directing the reception of a mentally ill offender into any psychiatric hospital or psychiatric nursing home, shall be sufficient authority for the admission of such person in such hospital or, as the case may be, such nursing home or any other psychiatric hospital or psychiatric nursing home to which such person may be lawfully transferred for detention therein.

3 of 1900.
45 of 1950.
46 of 1950.
62 of 1957.
2 of 1974.

Detention of alleged mentally ill person pending report by medical officer.

31. (1) When any person alleged to be a mentally ill person appears or is brought before a Magistrate under section 25 or section 27, the Magistrate may, by order in writing, authorise the detention of the alleged mentally ill person in suitable custody for such period not exceeding ten days as the Magistrate may consider necessary for enabling any medical officer to determine whether a medical certificate in respect of that alleged mentally ill person may properly be given under clause (a) of sub-section (2) of section 26.

(2) The Magistrate may, from time to time, for the purpose mentioned in sub-section (1), by order in writing, authorise such further detention of the alleged mentally ill person for periods not exceeding ten days at a time as he may deem necessary:

Provided that no person shall be authorised to be detained under this sub-section for a continuous period exceeding thirty days in the aggregate.

Detention of mentally ill person pending his removal to psychiatric hospital or psychiatric nursing home.

32. Whenever any reception order is made by a Magistrate under section 24, section 26 or section 27, he may, for reasons to be recorded in writing, direct that the mentally ill person in respect of whom the order is made may be detained in such place as he may deem appropriate, pending the removal of such person to a psychiatric hospital or psychiatric nursing home.

E.—Miscellaneous provisions in relation to orders under this Chapter

33. Where any order under this Chapter is required to be made on the basis of a medical certificate, such order shall not be made unless the person who has signed the medical certificate, or where such order is required to be made on the basis of two medical certificates, the signatory of the respective certificates, has certified that he has personally examined the alleged mentally ill person,—

Time and manner of medical examination of mentally ill person.

(i) in the case of an order made on application, not earlier than ten clear days immediately before the date on which such application is made; and

(ii) in any other case, not earlier than ten clear days immediately before the date of such order:

Provided that where a reception order is required to be made on the basis of two medical certificates such order shall not be made unless the certificates show that the signatory of each certificate examined the alleged mentally ill person independently of the signatory of the other certificate.

34 A temporary treatment order or a reception order made under this Chapter shall be sufficient authority—

Authority for reception or for temporary treatment order.

(i) for the applicant or any person authorised by him, or

(ii) in the case of a reception order made otherwise than on an application, for the person authorised so to do by the authority making the order.

to take the mentally ill person to the place mentioned in such order or for his admission and treatment as an inpatient in the psychiatric hospital or psychiatric nursing home specified in the order, or, as the case may be, for his admission and detention therein, or in any psychiatric hospital or psychiatric nursing home to which he may be removed in accordance with the provisions of this Act, and the medical officer in charge shall be bound to comply with such order:

Provided that in any case where the medical officer in charge finds accommodation in the psychiatric hospital or psychiatric nursing home inadequate, he shall, after according admission, intimate that fact to the Magistrate or the Court which passed the order and thereupon the Magistrate or the Court, as the case may be, shall pass such order as he or it may deem fit:

Provided further that every temporary treatment order or reception order shall cease to have effect—

(a) on the expiry of thirty days from the date on which it was made, unless within that period, the mentally ill person has been admitted to the place mentioned therein, and

(b) on the discharge, in accordance with the provisions of this Act, of the mentally ill person.

Copy of temporary treatment order or reception order to be sent to medical officer in charge.

Restriction as to psychiatric hospitals and psychiatric nursing homes into which temporary treatment order or reception order may direct admission.

Amendment of order or documents.

Power to appoint substitute for person upon whose application reception order has been made.

35. Every Magistrate or Court making a temporary treatment order or reception order shall forthwith send a certified copy thereof together with copies of the requisite medical certificates and the statement of particulars to the medical officer in charge of the psychiatric hospital or psychiatric nursing home to which the mentally ill person is to be admitted.

36. No Magistrate or Court shall pass a temporary treatment order or a reception order for the admission as an inpatient to, or for the detention of any mentally ill person in, any psychiatric hospital or psychiatric nursing home outside the State in which the Magistrate or the Court exercises jurisdiction:

Provided that an order for admission or detention into or in a psychiatric hospital or psychiatric nursing home situated in any other State may be passed if the State Government has, by general or special order and after obtaining the consent of the Government of such other State authorised the Magistrate or the Court in that behalf.

37. If, after the admission of any mentally ill person to any psychiatric hospital or psychiatric nursing home under a temporary treatment order or a reception order, it appears that the order under which he was admitted or detained or any of the documents on the basis of which such order was made is defective or incorrect, the same may, at any time thereafter, be amended with the permission of the Magistrate or the Court, by the person or persons who signed the same and upon such amendment being made, the order shall have effect and shall be deemed always to have had effect as if it had been originally made as so amended, or, as the case may be, the documents upon which it was made had been originally furnished as so amended.

38. (1) Subject to the provisions of this section the Magistrate may, by order in writing (hereinafter referred to as the order of substitution), transfer the duties and responsibilities under this Act, of the person on whose application a reception order was made, to any other person who is willing to undertake the same and such other person shall thereupon be deemed for the purposes of this Act to be the person on whose application the reception order was made and all references in this Act to the latter person shall be construed accordingly:

Provided that no such order of substitution shall absolve the person upon whose application the reception order was made or, if he is dead, his legal representatives, from any liability incurred before the date of the order of substitution.

(2) Before making any order of substitution, the Magistrate shall send a notice to the person on whose application the reception order was made, if he is alive, and to any relative of the mentally ill person who, in the opinion of the Magistrate, shall have notice.

(3) The notice under sub-section (2) shall specify the name of the person in whose favour it is proposed to make the order of substitution

and the date (which shall be not less than twenty days from the date of issue of the notice) on which objections, if any, to the making of such order shall be considered.

(4) On the date specified under sub-section (3), or on any subsequent date to which the proceedings may be adjourned, the Magistrate shall consider any objection made by any person to whom notice was sent, or by any other relative of the mentally ill person, and shall receive all such evidence as may be produced by or on behalf of any such person or relative and after making such inquiry as the Magistrate may deem fit, make or refrain from making the order of substitution:

Provided that, if the person on whose application the reception order was made is dead and any other person is willing and is, in the opinion of the Magistrate, fit to undertake the duties and responsibilities under this Act of the former person, the Magistrate shall, subject to the provisions contained in the proviso to sub-section (1), make an order to that effect.

(5) In making any substitution order under this section, the Magistrate shall give preference to the person who is the nearest relative of the mentally ill person, unless, for reasons to be recorded in writing, the Magistrate considers that giving such preference will not be in the interests of the mentally ill person.

(6) The Magistrate may make such order for the payment of the costs of an inquiry under this section by any person or from out of the estate of the mentally ill person as he thinks fit.

(7) Any notice under sub-section (2) may be sent by post to the last known address of the person for whom it is intended.

39. In any area where a Commissioner of Police has been appointed, all the powers and functions of the Magistrate under sections 25, 26, 27, 28 and 31 may be exercised or discharged by the Commissioner of Police and all the functions of an officer in charge of a police station under this Act may be discharged by any police officer not below the rank of an Inspector.

Officers competent to exercise powers and discharge functions of Magistrate under certain sections.

CHAPTER IV

INSPECTION, DISCHARGE, LEAVE OF ABSENCE AND REMOVAL OF MENTALLY ILL PERSONS

PART I

Inspection.

40. (1) The State Government shall appoint for every psychiatric hospital and every psychiatric nursing home in the State, not less than five Visitors, of whom at least one shall be a medical officer, preferably a psychiatrist.

Appointment of Visitors.

(2) The Inspector-General of Prisons and the head of the Medical Services of the State shall be *ex-officio* Visitors of all the psychiatric hospitals and psychiatric nursing homes in the State.

(3) The qualifications of persons to be appointed as Visitors under sub-section (1) and the terms and conditions of their appointment shall be such as may be prescribed.

Monthly
inspection
by Visi-
tors.

41. Not less than three Visitors shall, at least once in every month, make a joint inspection of every part of the psychiatric hospital or psychiatric nursing home in respect of which they have been appointed and examine, as far as circumstances will permit, every mentally ill person admitted therein and the order for the admission of, and the medical certificates relating to, every mentally ill person admitted subsequent to the joint inspection immediately preceding, and shall enter in a book kept for that purpose such remarks as they deem appropriate in regard to the management and condition of such hospital or nursing home and of the inpatients thereof:

Provided that the Visitors shall not be entitled to inspect any personal records of an inpatient which in the opinion of the medical officer in charge are confidential in nature.

Inspection
of men-
tally
ill
offenders.

42. (1) Notwithstanding anything contained in section 41, where any person is detained under the provisions of section 144 of the Air Force Act, 1950, or section 145 of the Army Act, 1950, or section 143 or section 144 of the Navy Act, 1957, or section 330 or section 335 of the Code of Criminal Procedure, 1973,—

45 of 1950.
46 of 1950.
62 of 1957.
2 of 1974.

(i) the Inspector-General of Prisons, where such person is detained in a jail; or

(ii) the Inspector-General of Prisons and all or any three of the Visitors appointed under sub-section (1) of section 40, where such person is detained in a psychiatric hospital or psychiatric nursing home,

shall once in every six months, visit such person at the place where he is detained, in order to assess the state of mind of such person and make a report thereon to the authority under whose order such person is so detained.

(2) The State Government may empower any of its officers to discharge all or any of the functions of the Inspector-General of Prisons under sub-section (1).

(3) The medical officer in charge of a psychiatric hospital or psychiatric nursing home wherein any person referred to in sub-section (1) is detained, shall once in every six months, make a special report regarding the mental and physical condition of such person to the authority under whose order such person is detained.

(4) Every person referred to in sub-section (1) who is detained in jail, shall be visited at least once in every six months by a psychiatrist, or, where a psychiatrist is not available, by a medical officer empowered by the State Government in this behalf and such psychiatrist or, as the case may be, such medical officer shall make a special report regarding the mental and physical condition of such person to the authority under whose order such person is detained.

PART II

Discharge

43. (1) Notwithstanding anything contained in Chapter III, any three of the Visitors of a psychiatric hospital or psychiatric nursing home may, on the recommendation of the medical officer in charge, by order in writing, direct the discharge of any person, other than a voluntary patient detained or undergoing treatment therein as an inpatient, and such person shall thereupon be discharged from the psychiatric hospital or psychiatric nursing home:

Order of
discharge
by Visi-
tors.

3 of 1900. Provided that no order under this sub-section shall be made in respect of a mentally ill offender otherwise than as provided in section 30 of the Prisoners Act, 1900 or in any other relevant law.

(2) Where any order of discharge is made under sub-section (1) in respect of a person who has been detained or is undergoing treatment as inpatient in pursuance of an order of any authority, a copy of such order shall be immediately forwarded to that authority by the medical officer in charge.

44. Any person detained in a psychiatric hospital or psychiatric nursing home under an order made in pursuance of an application made under this Act, shall be discharged on an application made in that behalf to the medical officer in charge by the person on whose application the order was made:

Discharge
of men-
tally ill
person on
application.

Provided that no person shall be discharged under this section if the medical officer in charge certifies in writing that the person is dangerous and unfit to be at large.

45. (1) Where any relative or friend of a mentally ill person detained in a psychiatric hospital or psychiatric nursing home under section 24, section 26, section 27 or section 28 desires that such person shall be delivered over to his care and custody, he may make an application to the medical officer in charge who shall forward it together with his remarks thereon to the authority under whose orders the mentally ill person is detained.

Order of
discharge
on the
application
of
relative
or friend,
etc., for the
care of
mentally
ill
person.

(2) Where an application is received under sub-section (1), the authority shall, on such relative or friend furnishing a bond, with or without sureties, for such amount as such authority may specify in this behalf, undertaking to take proper care of such mentally ill person, and ensuring that the mentally ill person shall be prevented from causing injury to himself or to others, make an order of discharge and thereupon the mentally ill person shall be discharged.

46. (1) Any person (not being a mentally ill offender) detained in pursuance of an order made under this Act, who feels that he has recovered from his mental illness, may make an application to the Magistrate for his discharge from the psychiatric hospital or the psychiatric nursing home.

Discharge
of person
on his
request.

(2) An application made under sub-section (1), shall be supported by a certificate either from the medical officer in charge of the psychiatric hospital or the psychiatric nursing home where the applicant is undergoing treatment or from a psychiatrist.

(3) The Magistrate may, after making such inquiry as he may deem fit, pass an order discharging the person or dismissing the application.

Discharge
of person
subsequen-
tly found
on inquisi-
tion not
to be
of unsound
mind.

47. If any person detained in a psychiatric hospital or psychiatric nursing home in pursuance of a reception order made under this Act is subsequently found, on an inquisition held in accordance with the provisions of Chapter V, to be of sound mind or capable of taking care of himself and managing his affairs, the medical officer in charge shall forthwith, on the production of a copy of such finding duly certified by the District Court, discharge such person from such hospital or nursing home.

PART III

Leave of absence

Leave of
absence.

48. An application for leave of absence on behalf of any mentally ill person (not being a mentally ill offender) undergoing treatment as an inpatient in any psychiatric hospital or psychiatric nursing home may be made to the medical officer in charge,—

(a) in the case of a person who was admitted on the application of the husband or wife, by the husband or wife of such mentally ill person, or where by reason of mental or physical illness, absence from India or otherwise, the husband or wife is not in a position to make such application, by any other relative of the mentally ill person duly authorised by the husband or wife, or

(b) in the case of any other person, by the person on whose application the mentally ill person was admitted;

Provided that no application under this sub-section shall be made by a person who has not attained the age of majority.

(2) Every application under sub-section (1) shall be accompanied by a bond, with or without sureties for such amount as the medical officer in charge may specify, undertaking—

(i) to take proper care of the mentally ill person,

(ii) to prevent the mentally ill person from causing injury to himself or to others, and

(iii) to bring back the mentally ill person to the psychiatric hospital or, as the case may be, psychiatric nursing home, on the expiry of the period of leave.

(3) On receipt of an application under sub-section (1) the medical officer in charge may grant leave of absence to the mentally ill person for such period (not exceeding thirty days at a time and not exceeding one hundred and eighty days in the aggregate) and subject to such conditions as may, in the interests of the health and personal safety of the mentally ill person or for the protection of others, be specified in the order.

(4) Where the mentally ill person is not brought back to the psychiatric hospital or psychiatric nursing home on the expiry of the leave granted to him under this section, the medical officer in charge shall forthwith report that fact to the Magistrate within the local limits of

whose jurisdiction such hospital or nursing home is situate and the Magistrate may, after making such inquiry as he may deem fit, make an order directing him to be brought back to the psychiatric hospital or psychiatric nursing home, as the case may be.

(c) Nothing contained in this section shall apply to a voluntary patient referred to in section 15 and the provisions of section 18 shall apply to him.

49. (1) Where the medical officer in charge refuses to grant leave or absence to a mentally ill person under section 48, the applicant may apply to the Magistrate within the local limits of whose jurisdiction the psychiatric hospital or psychiatric nursing home wherein the mentally ill person is detained is situate, for the grant of leave of absence to the mentally ill person and the Magistrate may, if he is satisfied that it is necessary so to do, and on the applicant entering into a bond in accordance with the provisions of sub-section (2), by order, grant leave of absence to the mentally ill person for such period and subject to such conditions as may be specified in the order.

Grant of leave of absence by Magistrate.

(2) Every bond referred to in sub-section (1) shall be with or without sureties and for such amount as the Magistrate may decide and shall contain the undertaking referred to in sub-section (2) of section 48.

(3) The Magistrate shall forward a copy of his order to the medical officer in charge and on receipt of such order, the medical officer in charge shall entrust the mentally ill person to the person on whose application the leave of absence was granted under this section.

PART IV

Removal

50. (1) Any mentally ill person other than a voluntary patient referred to in section 15 may, subject to any general or special order of the State Government, be removed from any psychiatric hospital or psychiatric nursing home to any other psychiatric hospital or psychiatric nursing home within the State, or to any other psychiatric hospital or psychiatric nursing home in any other State with the consent of the Government of that other State:

Removal of mentally ill person from one psychiatric hospital or psychiatric nursing home to another.

Provided that no mentally ill person admitted to a psychiatric hospital or psychiatric nursing home under an order made in pursuance of an application made under this Act shall be so removed unless intimation thereof has been given to the applicant

(2) The State Government may make such general or special order as it thinks fit directing the removal of any mentally ill offender from the place where he is for the time being detained, to any psychiatric hospital, psychiatric nursing home, jail or other place of safe custody in the State or to any psychiatric hospital, psychiatric nursing home, jail or other place of safe custody in any other State with the consent of the Government of that other State.

51. Every person brought into a psychiatric hospital or psychiatric nursing home under any order made under this Act, may be detained or, as the case may be, admitted as an inpatient therein until he is removed or is discharged under any law, and in case of his escape from such hospital or nursing home he may, by virtue of such order, be retaken by

Admission, detention and retaking in certain cases.

any police officer or by the medical officer in charge or any officer or servant of such hospital or nursing home, or by any other person authorised in that behalf by the medical officer in charge, and conveyed to, and received and detained or, as the case may be, kept as an inpatient in such hospital or nursing home:

Provided that in the case of a mentally ill person (not being a mentally ill offender) the power to retake as aforesaid under this section shall not be exercisable after the expiry of a period of one month from the date of his escape.

Appeal
from
orders
of Magi-
strate.

52. Any person aggrieved by any order of a Magistrate, passed under any of the foregoing provisions may, within thirty days from the date of the order, appeal against that order to the District Court within the local limits of whose jurisdiction the Magistrate exercised the powers, and the decision of the District Court on such appeal shall be final.

CHAPTER V

JUDICIAL INQUISITION REGARDING ALLEGED MENTALLY ILL PERSON POSSESSING PROPERTY, CUSTODY OF HIS PERSON AND MANAGEMENT OF HIS PROPERTY

Applica-
tion for
judicial
inquisi-
tion.

53. (1) Where an alleged mentally ill person is possessed of property, an application for holding an inquisition into the mental condition of such person may be made either—

(a) by any of his relatives, or

(b) by a public curator appointed under the Indian Succession Act, 1925, or

(c) by the Advocate-General of the State in which the alleged mentally ill person resides, or

(d) where the property of the alleged mentally ill person comprises land or interest in land, or where the property or part thereof is of such a nature as can lawfully be entrusted for management to a Court of Wards established under any law for the time being in force in the State, by the Collector of the District in which such land is situate,

to the District Court within the local limits of whose jurisdiction the alleged mentally ill person resides.

(2) On receipt of an application under sub-section (1), the District Court shall, by personal service or by such other mode of service as it may deem fit, serve a notice on the alleged mentally ill person to attend at such place and at such time as may be specified in the notice or shall, in like manner, serve a notice on the person having the custody of the alleged mentally ill person to produce such person at the said place and at the said time, for being examined by the District Court or by any other person from whom the District Court may call for a report concerning the mentally ill person:

Provided that, if the alleged mentally ill person is a woman, who according to the custom prevailing in the area where she resides or according to the religion to which she belongs, ought not to be compelled to appear in public, the District Court may cause her to be examined

5 of 1908.

by issuing a commission as provided in the Code of Civil Procedure, 1908.

(3) A copy of the notice under sub-section (2) shall also be served upon the applicant and upon any relative of the alleged mentally ill person or other person who, in the opinion of the District Court, shall have notice of judicial inquisition to be held by it.

(4) For the purpose of holding the inquisition applied for, the District Court may appoint two or more persons to act as assessors.

54. On completion of the inquisition, the District Court shall record its findings on,—

(i) whether the alleged mentally ill person is in fact mentally ill or not, and

(ii) where such person is mentally ill, whether he is incapable of taking care of himself and of managing his property, or incapable of managing his property only.

Issues on which finding should be given by District Court after inquisition.

55. (1) Where the District Court records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of taking care of himself and of managing his property, it shall make an order for the appointment of a guardian under section 56 to take care of his person and of a manager under section 57 for the management of his property.

Provision for appointing guardian of mentally ill person and for manager of property.

(2) Where the District Court records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of managing his property but capable of taking care of himself, it shall make an order under section 57 regarding the management of his property.

(3) Where the District Court records a finding that the alleged mentally ill person is not mentally ill, it shall dismiss the application.

(4) Where the District Court deems fit, it may appoint under sub-section (1) the same person to be the guardian and manager.

56. (1) Where the mentally ill person is incapable of taking care of himself, the District Court or, where a direction has been issued under sub-section (2) of section 57, the Collector of the District, may appoint any suitable person to be his guardian:

Appointment of guardian of mentally ill person.

Provided that, no person, who is the legal heir of the mentally ill person, shall be appointed to be the guardian unless the District Court or, as the case may be, the Collector, for reasons to be recorded in writing, considers that such appointment is for the benefit of the mentally ill person.

(2) In the discharge of his functions under sub-section (1), the Collector shall be subject to the supervision and control of the State Government or of any authority appointed by it in that behalf.

Appoint-
ment of
manager
for mana-
gement
of pro-
perty of
mentally
ill person.

57. (1) Where the property of the mentally ill person who is incapable of managing it is such as can be taken charge of by a Court of Wards under any law for the time being in force, the District Court shall authorise the Court of Wards to take charge of such property, and thereupon, notwithstanding anything contained in such law, the Court of Wards shall assume the management of such property in accordance with that law.

(2) Where the property of the mentally ill person consists in whole or in part of land or of any interest in land which cannot be taken charge of by the Court of Wards, the District Court may, after obtaining the consent of the Collector of the District in which the land is situate, direct the Collector to take charge of such part of the property or interest therein of the mentally ill person as cannot be taken charge of by the Court of Wards.

(3) Where the management of the property of the mentally ill person cannot be entrusted to the Court of Wards or to the Collector under sub-section (1) or sub-section (2), as the case may be, the District Court shall appoint any suitable person to be the manager of such property

Appoint-
ment of
manager
by
Collector.

58. Where the property of a mentally ill person has been entrusted to the Collector by the District Court under sub-section (2) of section 57, he may, subject to the control of the State Government or of any authority appointed by it in that behalf, appoint any suitable person for the management of the property of the mentally ill person.

Manager
of pro-
perty to
execute
bond.

59. Every person who is appointed as the manager of the property of a mentally ill person by the District Court or by the Collector shall, if so required by the appointing authority, enter into a bond for such sum, in such form and with such sureties as that authority may specify, to account for all receipts from the property of the mentally ill person.

Remunera-
tion of
managers
and
guardians.

60. The guardian of a mentally ill person and the manager of his property, appointed under this Act, shall be paid, from out of the property of the mentally ill person, such allowance as the appointing authority may determine.

Duties
of guar-
dian.

61. (1) Every person appointed as guardian of a mentally ill person or manager of his property, or of both, under this Act shall have the care of the mentally ill person or his property, or of both and the responsible for the maintenance of the mentally ill person and of such members of his family as are dependent on him.

(2) Where the person appointed as guardian of a mentally ill person is different from the person appointed as the manager of his property, the manager of his property shall pay to the guardian of the mentally ill person such allowance as may be fixed by the authority appointing the guardian for the maintenance of the mentally ill person and of such members of his family as are dependent on him.

Powers of
manager.

62. (1) Every manager appointed under this Act shall, subject to the provisions of this Act, exercise the same powers in regard to the management of the property of the mentally ill person in respect of which he is

appointed as manager, as the mentally ill person would have exercised as owner of the property had he not been mentally ill, and shall realise all claims due to the estate of the mentally ill person and pay all debts and discharge all liabilities legally due from that estate:

Provided that, the manager shall not mortgage, create any charge on, or, transfer by sale, gift, exchange or otherwise, any immovable property of the mentally ill person or lease out any such property for a period exceeding five years, unless he obtains the permission of the District Court in that behalf.

(2) The District Court may, on an application made by the manager, grant him permission to mortgage, create a charge on, or, transfer by sale, gift, exchange or otherwise, any immovable property of the mentally ill person or to lease out any such property for a period exceeding five years, subject to such conditions or restrictions as that Court may think fit to impose.

(3) The District Court shall cause notice of every application for permission to be served on any relative or friend of the mentally ill person and after considering objections, if any, received from the relative or friend and after making such inquiries as it may deem necessary, grant or refuse permission having regard to the interests of the mentally ill person.

63. (1) Every manager appointed under this Act shall, within a period of six months from the date of his appointment, deliver to the authority, which appointed him, an inventory of the immovable property belonging to the mentally ill person and of all assets and other movable property received on behalf of the mentally ill person, together with a statement of all claims due to, and all debts and liabilities due by, such mentally ill person.

Manager to furnish inventory and annual accounts.

(2) Every such manager shall also furnish to the said appointing authority within a period of three months of the close of every financial year, an account of the property and assets in his charge, the sums received and disbursed on account of the mentally ill person and the balance remaining with him.

64. Every manager appointed under this Act may, in the name and on behalf of the mentally ill person,—

(a) execute all such conveyances and instruments of transfers by way of sale, mortgage or otherwise of property of the mentally ill person as may be permitted by the District Court; and

(b) subject to the orders of the District Court, exercise all powers vested in that behalf in the mentally ill person, in his individual capacity or in his capacity as a trustee or as a guardian.

Manager's power to execute conveyances under orders of District Court.

65. Where the mentally ill person had, before his mental illness, contracted to sell or otherwise dispose of his property or any portion thereof, and if such contract is, in the opinion of the District Court, of such a nature as ought to be performed, the District Court may direct the manager appointed under this Act to perform such contract and to do such other acts in fulfilment of the contract as the Court considers necessary and thereupon the manager shall be bound to act accordingly.

Manager to perform contracts directed by District Court.

66. Where a mentally ill person had been engaged in business before he became mentally ill, the District Court may, if it appears to be for

Disposal of business premises,

the benefit of the mentally ill person to dispose of his business premises, direct the manager appointed under this Act in relation to the property of such person to sell and dispose of such premises and to apply the sale proceeds thereof in such manner as the District Court may direct and thereupon the manager shall be bound to act accordingly.

Manager
may dis-
pose of
leases.

67. Where a mentally ill person is entitled to a lease or underlease, and it appears to the manager appointed under this Act in relation to the property of such person that it would be for the benefit of the mentally ill person to dispose of such lease or underlease, such manager may, after obtaining the orders of the District Court, surrender, assign or otherwise dispose of such lease or underlease to such person for such consideration and upon such terms and conditions as the Court may direct.

Power to
make
order
concern-
ing any
matter
connected
with
mentally
ill person.

68. The District Court may, on an application made to it by any person concerning any matter whatsoever connected with the mentally ill person or his property make such order, subject to the provisions of this Chapter, in relation to that matter as in the circumstances it thinks fit.

Proceeding
if accu-
racy of
inventory
or
accounts
is impug-
ned.

69. If any relative of the mentally ill person or the Collector impugns, by a petition to the District Court, the accuracy of the inventory or statement referred to in sub-section (1), or, as the case may be, any annual account referred to in sub-section (2), of section 63, the Court may summon the manager and summarily inquire into the matter and make such order thereon as it thinks fit:

Provided that the District Court may, in its discretion, refer such petition to any Court subordinate to it, or to the Collector in any case where the manager was appointed by the Collector and the petition is not presented by the Collector.

Payment
into
public
treasury
and invest-
ment of
proceeds
of estate.

70. All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the mentally ill person or for the management of his property, shall be paid into the public treasury on account of the estate, and shall be invested from time to time in any of the securities specified in section 20 of the Indian Trusts Act, 1882, unless the authority which appointed him, for reasons to be recorded in writing, directs that, in the interests of the mentally ill person such sums be otherwise invested or applied.

2 of 1882.

Relative
may
sue for
accounts.

71. Any relative of a mentally ill person may, with the leave of the District Court, sue for an account from any manager appointed under this Act, or from any such person after his removal from office or trust, or from his legal representative in the case of his death, in respect of any property then or formerly under his management or of any sums of money or other property received by him on account of such property.

Removal
of
managers
and
guardians.

72. (1) The manager of the property of a mentally ill person may, for sufficient cause and for reasons to be recorded in writing, be removed by the authority which appointed him and such authority may appoint a new manager in his place.

(2) Any manager removed under sub-section (1) shall be bound to deliver the charge of all property of the mentally ill person to the new manager, and to account for all moneys received or disbursed by him.

(3) The District Court may, for sufficient cause, remove any guardian of a mentally ill person and appoint in his place a new guardian.

73. (1) Where a person, being a member of a partnership firm, is found to be mentally ill, the District Court may, on the application of any other partner for the dissolution of partnership or on the application of any person who appears to that Court to be entitled to seek such dissolution, dissolve the partnership.

Dissolution and disposal of property of partnership on a member becoming mentally ill.

(2) Upon the dissolution under sub-section (1), or otherwise, in due course of law, of a partnership firm to which that sub-section applies, the manager appointed under this Act may, in the name and on behalf of the mentally ill person, join with the other partners in disposing of the partnership property upon such terms, and shall do all such acts for carrying into effect the dissolution of the partnership, as the District Court may direct.

74. (1) Notwithstanding anything contained in the foregoing provisions, the District Court may, instead of appointing a manager of the estate, order that in the case of cash, the cash and in the case of any other property the produce thereof, shall be realised and paid or delivered to such person as may be appointed by the District Court in this behalf, to be applied for the maintenance of the mentally ill person and of such members of his family as are dependent on him.

Power to apply property for maintenance of mentally ill person without appointing manager in certain cases.

(2) A receipt given by the person appointed under sub-section (1) shall be valid discharge to any person who pays money or delivers any property of the mentally ill person to the person so appointed.

75. Where any stock or Government securities or any share in a company (transferable within India or the dividends of which are payable therein) is or are standing in the name of, or vested in, a mentally ill person beneficially entitled thereto, or in the manager appointed under this Act or in a trustee for him, and the manager dies intestate, or himself becomes mentally ill, or is out of the jurisdiction of the District Court, or it is uncertain whether the manager is living or dead, or he neglects or refuses to transfer the stock, securities or shares, or to receive and pay over thereof the dividends to a new manager appointed in his place, within fourteen days after being required by the Court to do so, then the District Court may direct the Company or Government concerned to make such transfer, or to transfer the same, and to receive and pay over the dividends in such manner as it may direct.

Power to order transfer of stock belonging to mentally ill person in certain cases.

76. Where any stock or Government securities or share in a company is or are standing in the name of, or vested in, any person residing out of India, the District Court upon being satisfied that such person has been declared to be mentally ill and that his personal estate has been vested in a person appointed for the management thereof, according to the law of the place where he is residing, may direct the Company or Government concerned to make such transfer of the stock, securities or

Power to order transfer of stock of mentally ill person residing out of India.

shares or of any part thereof, to or into the name of the person so appointed or otherwise, and also to receive and pay over the dividends and proceeds, as the District Court thinks fit.

Power to apply property for mentally ill person's maintenance in case of temporary mental illness.

77. If it appears to the District Court that the mental illness of a mentally ill person is in its nature temporary, and that it is expedient to make provision for a temporary period, for his maintenance or for the maintenance of such members of his family as are dependent on him, the District Court may, in like manner as under section 74, direct his property or a sufficient part thereof to be applied for the purpose specified therein.

Action taken in respect of mentally ill person to be set aside if District Court finds that his mental illness has ceased.

78. (1) Where the District Court has reason to believe that any person who was found to be mentally ill after inquisition under this Chapter has ceased to be mentally ill, it may direct any court subordinate to it to inquire whether such person has ceased to be mentally ill.

(2) An inquiry under sub-section (1) shall, so far as may be, be conducted in the same manner as an inquisition conducted under this Chapter.

(3) If after an inquiry under this section, it is found that the mental illness of a person has ceased, the District Court shall order all actions taken in respect of the mentally ill person under this Act to be set aside on such terms and conditions as that Court thinks fit to impose.

Appeals.

79. An appeal shall lie to the High Court from every order made by a District Court under this Chapter.

Power of District Court to make regulations.

80. The District Court may, from time to time, make regulations for the purpose of carrying into effect the provisions of this Chapter.

CHAPTER VI

LIABILITY TO MEET COST OF MAINTENANCE OF MENTALLY ILL PERSONS DETAINED IN PSYCHIATRIC HOSPITAL OR PSYCHIATRIC NURSING HOME

Cost of maintenance to be borne by Government in certain cases.

81. The cost of maintenance of a mentally ill person detained as an inpatient in any psychiatric hospital or psychiatric nursing home shall, unless otherwise provided for by any law for the time being in force, be borne by the Government of the State wherein the authority which passed the order in relation to the mentally ill person is subordinate, if—

(a) that authority which made the order has not taken an undertaking from any person to bear the cost of maintenance of such mentally ill person, and

(b) no provision for bearing the cost of maintenance of such person has been made in the said order.

82. Where an alleged mentally ill person is arrested on being found wandering at large, any cash or other article found in the possession of such person shall be produced by the arresting authority before the Magistrate before whom the said person is produced, and thereupon, the Magistrate shall direct the article found in the possession of such person to be sold and the sale proceeds thereof and the cash found with such person be applied for the cost of maintenance of such person in any psychiatric hospital or psychiatric nursing home.

Application of property in possession of mentally ill person found wandering.

83. (1) Where any mentally ill person detained in a psychiatric hospital or psychiatric nursing home has an estate or where any person legally bound to maintain such person has the means to maintain such person, the Government liable to pay the cost of maintenance of such person under section 81 or any local authority liable to bear the cost of maintenance of such mentally ill person under any law for the time being in force, may make an application to the District Court within whose jurisdiction the estate of the mentally ill person is situate or the person legally bound to maintain the mentally ill person and having the means therefor resides, for an order authorising it to apply the estate of the mentally ill person to the cost of maintenance or, as the case may be, directing the person legally bound to maintain the mentally ill person and having the means therefor to bear the cost of maintenance of such mentally ill person.

Application to District Court for payment of cost of maintenance out of estate of mentally ill person or from a person legally bound to maintain him.

(2) An order made by the District Court under sub-section (1) shall be enforced in the same manner, shall have the same force and effect and be subject to appeal, as a decree made by such Court in a suit in respect of the property or person mentioned therein:

Provided that, if the District Court so directs, any sum payable in pursuance of an order made under sub-section (1) shall be recoverable as an arrear of land revenue.

84. Nothing contained in the foregoing provisions shall be deemed to absolve a person legally bound to maintain a mentally ill person from maintaining such mentally ill person.

Persons legally bound to maintain mentally ill person not absolved from such liability.

CHAPTER VII

PENALTIES AND PROCEDURE

85. (1) Any person who establishes or maintains a psychiatric hospital or psychiatric nursing home in contravention of the provisions of Chapter II shall, on conviction, be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both, and in the case of a second or subsequent offence, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalty for establishment or maintenance of psychiatric hospital or psychiatric nursing home in contravention of Chapter II.

(2) Whoever, after conviction under sub-section (1), continues to maintain a psychiatric hospital or psychiatric nursing home in contravention of the provisions of Chapter II, shall, on conviction, be punishable with fine which may extend to one hundred rupees for every day after the first day during which the contravention is continued.

Penalty
for
improper
reception
of men-
tally ill
person.

86. Any person who receives or detains or keeps a mentally ill person in a psychiatric hospital or psychiatric nursing home otherwise than in accordance with the provisions of this Act, shall, on conviction, be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Penalty
for con-
travention
of sections
63 and
72.

87. Any manager appointed under this Act to manage the property of a mentally ill person, who contravenes the provisions of section 63 or sub-section (2) of section 72, shall, on conviction, be punishable with fine which may extend to five hundred rupees and may be detained in a civil prison till he complies with the said provisions.

General
provision
for
punish-
ment of
other
offences.

88. Any person who contravenes any of the provisions of this Act or of any rule or regulation made thereunder, for the contravention of which no penalty is expressly provided, in this Act, shall, on conviction, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Offences
by com-
panies.

89. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means a body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

Sanction
for pro-
secutions.

90. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no Court shall take cognizance of any offence punishable under section 85, except with the previous sanction of the licensing authority.

CHAPTER VIII

MISCELLANEOUS

2 of 1974.

91. The provisions of Chapter XXXIII of the Code of Criminal Procedure, 1973, shall, as far as may be, apply to bonds taken under this Act.

Provision
as to
bonds.

92. The medical officer in charge of a psychiatric hospital or psychiatric nursing home wherein any mentally ill person is detained under the provisions of this Act, shall, once in every six months, make a special report regarding the mental and physical condition of every such person to the authority under whose orders the person is so detained.

Half
yearly
report by
medical
officer.

93. (1) Where any sum is payable in respect of pay, pension, gratuity or any allowance to any person by any Government and the person to whom the sum is payable is certified by a Magistrate under this Act to be a mentally ill person, the officer under whose authority such sum would be payable, may pay to the person having charge of the mentally ill person so much of the said sum, as he thinks fit, having regard to the cost of maintenance of such person and may pay to such members of the family of the mentally ill person as are dependent on him for maintenance, the surplus, if any, or such part thereof, as he thinks fit having regard to the cost of maintenance of such members.

Pension,
etc., of
mentally
ill person
payable
by Gov-
ernment.

(2) Where there is any further surplus amount available out of the funds specified in sub-section (1) after making payments as provided in that sub-section, the Government shall hold the same to be dealt with as follows, namely:—

(a) where the mentally ill person is certified to have ceased to be mentally ill by the District Court within the local limits of whose jurisdiction such person resides or is kept or detained, the whole of the surplus amount shall be paid back to that person;

(b) where the mentally ill person dies before payment, the whole of the surplus amount shall be paid over to those of his heirs who are legally entitled to receive the same;

(c) where the mentally ill person dies during his mental illness without leaving any person legally entitled to succeed to his estate, the whole of the surplus amount shall, with the prior permission of the District Court, be utilised for such charitable purpose as may be approved by the District Court.

(3) The Central Government or the State Government as the case may be, shall be discharged of all liability in respect of any amounts paid in accordance with this section.

94. (1) Where, in any proceeding before a Magistrate, the mentally ill person is not represented by a legal practitioner and where it appears to the Magistrate that the person has not sufficient means to engage a legal practitioner, the Magistrate shall assign a legal practitioner to represent him at the expense of the State.

Legal
aid to
mentally
ill person
at State
expense
in certain
cases.

(2) The High Court may, with the previous approval of the State Government, make rules providing for—

(a) the mode of selecting legal practitioners for the purpose of sub-section (1);

(b) the facilities to be allowed to such legal practitioners;

(c) the fees payable to such legal practitioners by the Government and generally for carrying out the purpose of sub-section (1).

(3) For the removal of doubts it is hereby declared that the provisions of this section shall not apply to any proceeding for insolvency under Chapter V of this Act.

Explanation.—In this section "legal practitioner" shall have the meaning assigned to it in clause (1) of section 2 of the Advocates Act, 1961.

25 of 1961

Protection of action taken in good faith.

95. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules, regulations or orders made thereunder.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused for anything which is in good faith done or intended to be done in pursuance of this Act or any rules, regulations or orders made thereunder.

Construction of references to laws not in force in Jammu and Kashmir.

96. Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.

Power to State Government to make rules

97. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the clinical conditions referred to in clause (m) of section 2;

(b) the class or category of persons for whom separate psychiatric hospitals and psychiatric nursing homes may be established and maintained under clause (c) of sub-section (1) of section 3;

(c) the form in which,—

(i) an application shall be made for grant or renewal of a licence and the fee payable in respect thereof under section 5 or, as the case may be, section 9;

(ii) a licence shall be granted for the establishment or maintenance of a psychiatric hospital or a psychiatric nursing home under section 6;

(iii) an application shall be made by any relative or friend of a mentally ill person for a temporary treatment order under section 20;

(iv) an application shall be made for a reception, order under section 22;

(v) a medical certificate, referred to in sub-section (6) of section 22 shall be granted;

(vi) an application shall be made for the admission of a mentally ill person in an emergency under sub-section (1) of section 28;

(vii) a certificate shall be given by a medical practitioner for the admission of a mentally ill person in an emergency under sub-section (2) of section 28;

(d) the manner in which application for a reception order shall be signed and verified under sub-section (6) of section 22;

(e) the minimum facilities referred to in the proviso to section 9 to be provided in a psychiatric hospital or psychiatric nursing home for the treatment and care of mentally ill persons;

(f) the manner in which an order refusing to grant, or revoking a licence shall be communicated under section 8 or, as the case may be, section 11;

(g) the manner in which and the conditions subject to which a licensee shall maintain a psychiatric hospital or psychiatric nursing home under section 10;

(h) the manner in which licensees shall maintain records under sub-section (1) of section 13;

(i) the manner in which and the form in which and the period within which an appeal against any order refusing to grant or renew a licence or revoking a licence shall be preferred and the fee payable in respect thereof under section 12;

(j) the facilities to be provided under section 14 for the treatment of a mentally ill person;

(k) the qualifications of persons to be appointed as Visitors and the terms and conditions on which they may be appointed, under section 40;

(l) any other matter which is required to be, or may be, prescribed.

(3) Any rule made under this section may provide that a contravention thereof shall be punishable with fine which may extend to five hundred rupees.

98. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force and to the extent of such inconsistency that other law shall be deemed to have no effect.

Effect of Act on other laws.

99. If any difficulty arises in giving effect to the provisions of this Act in any State, the State Government may, by order do anything not inconsistent with such provisions which appears to it to be necessary or expedient for the purpose of removing the difficulty:

Power to remove difficulty.

Provided that no order shall be made under this section in relation to any State after the expiry of two years from the date on which this Act comes into force in that State.

Repeal
and
saving.

100. (1) The Indian Lunacy Act, 1912 and the Lunacy Act, 1977, are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under either of the said Acts shall, in so far as such thing or action is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act and shall continue in force until superseded by anything done or any action taken under this Act.

4 of 1912.

Jammu
and
Kashmir
Act 25 of
1977 (1920
A.D.)

STATEMENT OF OBJECTS AND REASONS

The attitude of the society towards persons afflicted with mental illness has changed considerably and it is now realised that no stigma should be attached to such illness as it is curable, particularly, when diagnosed at an early stage. Thus the mentally ill persons are to be treated like any other sick persons and the environment around them should be made as normal as possible.

2. The experience of the working of the Indian Lunacy Act, 1912 has revealed that it has become out-moded. With the rapid advance of medical science and the understanding of the nature of the malady, it has become necessary to have fresh legislation with provisions for treatment of mentally ill persons in accordance with the new approach.

3. It is considered necessary—

(i) to regulate admission to psychiatric hospitals or psychiatric nursing homes of mentally ill persons who do not have sufficient understanding to seek treatment on a voluntary basis, and to protect the rights of such persons while being detained;

(ii) to protect society from the presence of mentally ill persons who have become or might become a danger or nuisance to others;

(iii) to protect citizens from being detained in psychiatric hospitals or psychiatric nursing homes without sufficient cause;

(iv) to regulate responsibility for maintenance charges of mentally ill persons who are admitted to psychiatric hospitals or psychiatric nursing homes;

(v) to provide facilities for establishing guardianship or custody of mentally ill persons who are incapable of managing their own affairs;

(vi) to regulate the powers of State Governments for establishing, licensing and controlling psychiatric hospitals and psychiatric nursing homes for mentally ill persons;

(vii) to provide for legal aid to mentally ill persons at State expense in certain cases.

4. The main object of the Bill is to implement the aforesaid proposals. The Notes on clauses appended to the Bill explain in detail the various provisions thereof.

NEW DELHI;

The 25th April, 1978.

JAGDAMBI PRASAD YADAV

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. H. 11018/1/78-PMS, dated the 5th May, 1978 from Shri Jagdambi Prasad Yadav, Minister of State in the Ministry of Health and Family Welfare to the Secretary, Lok Sabha.]

The President, having been informed of the subject matter of "The Mental Health Bill, 1978", recommends under Clauses (1) and (3) of Article 117 of the Constitution, the introduction of the said Bill and its consideration by the Lok Sabha.

Notes on clauses

Clause 2.—This clause, corresponding to section 3 of the Indian Lunacy Act, 1912 (hereinafter referred to as the old Act), contains the definitions. In view of the change in the attitude of the society towards persons afflicted with mental illness, the out-moded expressions like "asylum", "criminal lunatic" and "lunatic" have been substituted by suitable alternative expressions such as "psychiatric hospital or psychiatric nursing home", "mentally ill offender" and "mentally ill person". The definition of the expression "mental illness" has been suitably modified to make it comprehensive. Expressions like "medical practitioner", "psychiatrist" and "temporary treatment order" have also been defined in accordance with the scheme of the Bill.

Clause 3.—This clause corresponds to section 84 of the old Act. It empowers the Central Government in any part of India or the State Government within the limits of its jurisdiction to establish or maintain psychiatric hospitals or psychiatric nursing homes for the admission, treatment and care of mentally ill persons.

Clauses 4 to 11.—Clause 4 provides that no person shall establish or maintain a psychiatric hospital or psychiatric nursing home unless he holds a valid licence in that behalf.

Clauses 5 to 10 relate to the application for licence, grant or refusal of licence, duration of licence, renewal and revocation of licence, etc. These are self-explanatory.

Clause 12.—This clause provides an opportunity to an aggrieved person to appeal against an order of the licensing authority refusing to grant or renew a licence or revoking a licence.

Clause 13.—This clause provides for the inspection of psychiatric hospitals and psychiatric nursing homes by Inspecting Officers for the purpose of inquiring into any complaints made by or on behalf of patients as to the treatment and care therein. Such Inspecting Officers can also require the production of any records which are required to be kept in such hospitals or nursing homes.

Clause 14.—This clause provides for the facilities to be provided in a licensed psychiatric hospital or licensed psychiatric nursing home for the treatment of mentally ill persons whose condition do not warrant for their admission as inpatients.

Clauses 15 to 17.—These clauses provide for admission of mentally ill persons to any psychiatric hospital or psychiatric nursing home for treatment as voluntary patients.

clause 16(2) also provides that the State Government may in certain cases bear the cost of maintenance of the voluntary patients.

Clause 17 provides that all voluntary patients shall be bound to abide by regulations of the psychiatric hospital or psychiatric nursing home wherein they are inpatients.

Clause 18.—This clause provides for the leave of absence or discharge of voluntary patients.

Clause 19.—This clause provides that any mentally ill person who does not, or is unable to, express his willingness for admission as a voluntary patient may be admitted and kept as an inpatient in a psychiatric hospital or psychiatric nursing home on an application made by a relative of the mentally ill person for a period not exceeding ninety days if the medical officer in charge of such hospital or nursing home is satisfied that in the interests of the mentally ill person it is necessary so to do.

Clause 20.—This clause provides for temporary treatment order of the mentally ill person on an application made to the Magistrate by a relative or friend of a mentally ill person. Sub-clause (2) of this clause provides that every such application should be accompanied by two medical certificates from two medical practitioners (including a psychiatrist) of whom one shall be a medical practitioner in the service of the Government to the effect that the condition of such mentally ill person is such that he should be kept under observation as an inpatient in psychiatric hospital or psychiatric nursing home.

Clause 21.—This clause provides for discharge of persons detained in psychiatric hospitals or psychiatric nursing homes under temporary treatment order.

Clauses 22 to 26.—These clauses correspond to sections 5 to 7 of the old Act. Clause 22 provides that a medical officer in charge or the husband, wife or any other relative of the mentally ill person may make an application for a reception order where such mentally ill person is suffering from a mental disorder of such a nature and degree that his treatment is required to be continued for more than six months. Every such application should be accompanied by two medical certificates from two medical practitioners (including a psychiatrist) of whom one shall be a medical practitioner in the service of the Government.

Clause 23 provides for the form and contents of medical certificates.

Clause 24 provides for the procedure to be followed on receipt of an application under clause 22.

Clause 25 provides for the powers and duties of police officers in respect of certain mentally ill persons. It empowers the officer in charge of a police station to arrest or to cause to be arrested any person found wandering at large within the limits of his station whom he has reason to believe to be so mentally ill as to be incapable of taking care of himself and any person within the limits of his station whom he has reason to believe to be dangerous by reason of mental illness.

Clause 26 provides for the procedure to be followed on production of mentally ill person before a Magistrate.

Clause 27.—This clause corresponds to sections 13 and 15 of the old Act. It empowers every officer in charge of a police station who has

reason to believe that any person within the limits of his station is mentally ill and is not under proper care and control or is ill-treated or neglected by any relative or other person having charge of such mentally ill person to report forthwith such fact to the Magistrate within the local limits of whose jurisdiction such mentally ill person resides.

Clause 28.—This clause provides for admission of mentally ill person in emergency on an application made by any medical officer or medical practitioner or any friend or relative of a mentally ill person where he is of opinion that unless such mentally ill person is immediately admitted to any psychiatric hospital or psychiatric nursing home for treatment, the health and personal safety of such person or of others will be in imminent danger. Every such application shall be supported by a certificate to that effect from a medical practitioner.

Clause 29.—This clause corresponds to section 25 of the old Act. It provides for the admission of a mentally ill person as an inpatient after inquisition held by any District Court.

Clause 30.—This clause corresponds to section 24 of the old Act and deals with the admission and detention of mentally ill offenders.

Clause 31.—This clause corresponds to section 16 of the old Act and deals with the detention of alleged mentally ill person pending report by medical officer.

Clause 32.—This clause provides for the detention of mentally ill person pending his removal to psychiatric hospital or psychiatric nursing home.

Clause 33.—This clause corresponds to section 19 of the old Act. It provides for the time and manner of medical examination of mentally ill persons.

Clause 34.—This clause deals with the authority for reception order or for temporary treatment order. In so far as it relates to the reception order it corresponds to section 20 of the old Act.

Clause 35.—This clause provides for a copy of the temporary treatment order or reception order to be sent to the medical officer in charge. In so far as it relates to the reception order, it corresponds to section 21 of the old Act.

Clause 36.—This clause provides for the restriction as to psychiatric hospitals or psychiatric nursing homes into which temporary treatment order or reception order may direct admission. In so far as it relates to reception order it corresponds to section 22 of the old Act.

Clause 37.—This clause corresponds to section 27 of the old Act and deals with the amendment of any order or documents.

Clause 38.—This clause corresponds to section 11A of the old Act and empowers the Magistrate to appoint substitute for person upon whose application reception order has been made.

Clause 39.—This clause corresponds to section 17 of the old Act and enumerates officers competent to exercise powers and discharge functions of Magistrate under certain provisions of this Bill.

Clauses 40 to 47.—These clauses correspond to sections 28 to 34 of the old Act.

Clause 40 provides for the appointment of Visitors for every psychiatric hospital and psychiatric nursing home.

Clause 41 provides for the monthly inspection of psychiatric hospitals or psychiatric nursing homes by Visitors.

Clause 42 provides for the inspection of mentally ill offenders by the Inspector-General of Prisons.

Clause 43 deals with the order of discharge by Visitors on the recommendation of the medical officer in charge.

Clause 44 provides for the discharge of mentally ill person on application.

Clause 45 provides for the order of discharge of mentally ill person on the undertaking of relative or friend, etc., for due care of such mentally ill person.

Clause 47 provides for the discharge of persons subsequently found on inquisition not to be of unsound mind.

Clauses 48 and 49.—Clause 48 provides for leave of absence on behalf of any mentally ill person (not being mentally ill offender) undergoing treatment as an in patient in any psychiatric hospital or psychiatric nursing home to be granted by the medical officer in charge.

Clause 49 provides for such leave to be granted by a Magistrate where the medical officer in charge refuses to grant such leave.

Clause 50.—This clause provides for the removal of mentally ill person, other than a voluntary patient, from one psychiatric hospital or psychiatric nursing home to another.

Clause 51.—This clause corresponds to section 36 of the old Act. It provides for the admission, detention and retaking of mentally ill persons in certain cases.

Clause 52.—This clause gives an opportunity to the aggrieved person to appeal against an order passed by a Magistrate to the District Court.

Clauses 53 to 79.—These clauses, more or less, correspond to sections 37 to 83 of the old Act.

These clauses provide for application for judicial inquisition; issues on which finding should be given by District Court after inquisition; appointment of guardian of mentally ill person; appointment of manager for management of property of mentally ill person; appointment of manager by Collector; manager of property to execute bonds to account for all receipts from the property of mentally ill person; remuneration of manager and guardian; duties of guardian; powers of manager to execute conveyances under orders of District Court and other powers and functions of the manager to furnish inventory and annual accounts and to perform contracts directed by District Court; disposal of business premises or leases by the manager under the direction of the District Court; power of District Court to make orders concerning any other matter connected with the mentally ill person; proceedings if accuracy of inventory or accounts is impugned; payment into public treasury and investment of proceeds of estates; right of a relative of a mentally ill

person to sue for accounts; removal of managers and guardians; dissolution and disposal of partnership on a member becoming mentally ill; power to apply property for maintenance of mentally ill person without appointing manager in certain cases; power to order transfer of stock belonging to mentally ill person in certain cases; power to order transfer of stock of mentally ill person residing out of India; power to apply property for mentally ill person's maintenance in case of temporary mental illness; action taken in respect of mentally ill persons to be set aside if District Court finds that his mental illness has ceased, etc.

Clause 79 provides for an appeal to lie to the High Court from any order made by a District Court.

Clause 80.—This clause empowers the District Court to make regulations for the purpose of carrying into effect the aforesaid provisions.

Clauses 81 to 84.—These clauses correspond to sections 86 to 90 of the old Act.

Clause 81 provides for the cost of maintenance to be borne by Government in certain cases.

Clause 82 provides for the application of the property found on a mentally ill person who is arrested on being found wandering at large for the cost of his maintenance.

Clause 83 provides for an application to be made to the District Court for payment of cost of maintenance of a mentally ill person out of his estate or from such person who is legally bound to maintain the mentally ill person.

Clause 84 provides that nothing contained in the aforesaid provisions shall absolve a person who is legally bound to maintain a mentally ill person from maintaining such mentally ill person.

Clauses 85 to 89.—These clauses deal with the penalties and procedure. They are self-explanatory.

Clause 90.—This clause provides for the previous sanction of the licensing authority before any of the offences is taken cognizance of by any Court or Magistrate.

Clause 91.—This clause corresponds to section 94 of the old Act and deals with bonds.

Clause 92.—This clause requires the medical officer in charge of a psychiatric hospital or psychiatric nursing home to make a special report once in every six months regarding the mental and physical condition of every mentally ill person detained therein to the authority under whose order the person is so detained.

Clause 93.—This clause corresponds to section 95 of the old Act. It provides for the pay, pension, gratuity or any allowance to be paid to any mentally ill person by Government.

Clause 94.—This clause provides for legal aid to mentally ill persons at State expense in certain cases.

Clause 95.—This clause provides for the protection of action taken in good faith.

Clause 96.—This clause provides for the construction of references to laws not in force in the State of Jammu and Kashmir.

Clause 97.—This clause empowers the State Government to make rules for carrying out the provisions of this Bill.

Clause 98.—This clause provides that provisions of this Bill shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force and to the extent of such inconsistency that other law shall be deemed to have no effect.

Clause 99.—This clause empowers the State Government to remove any difficulty which may arise in giving effect to the provisions of this Bill within a period of two years from the date on which this law comes into force in the State concerned.

Clause 100.—This clause contains provisions regarding repeal and savings. Since this Bill, when enacted, extends to the whole of India, the Indian Lunacy Act, 1912 (4 of 1912) and the Lunacy Act, 1977 (Jammu and Kashmir Act 25 of 1977) are being repealed.

FINANCIAL MEMORANDUM

Clause 3 of the Bill empowers the Central Government to establish psychiatric hospitals or psychiatric nursing homes. It is not possible to visualise at this stage as to how many such hospitals or nursing homes would be established. It is, therefore, not possible to give precise details of the expenditure involved.

2. Clause 40 of the Bill provides for the appointment of Visitors for periodical inspection of psychiatric hospitals and psychiatric nursing homes. At present there is only one such hospital, namely, the Central Institute of Psychiatry, Ranchi, under the Government of India. Apart from this, there are two more such hospitals in the Union territories of Delhi and Goa, Daman and Diu known as the Hospital for Mental Diseases Shahdara and the Mental Hospital Panaji, respectively. The expenditure in respect of the maintenance of the aforesaid hospitals and the appointment of Visitors in relation thereto is being made from out of the normal budgetary grants. Hence, no additional expenditure of a recurring or non-recurring nature over and above the said budgetary grants will be incurred on account of the said clause.

3. Clause 94 provides for legal aid to mentally ill persons at State expense in certain cases. The fees and the facilities to the legal practitioners in such cases are to be prescribed by rules made by the High Court. It is, therefore, not possible to give precise details of the expenditure involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 97 of the Bill empowers the State Government to make rules for carrying out the provisions of the Act. The matters in respect of which rules may be made have been enumerated in detail under various items of sub-clause (2) of that clause and relate mainly to licensing and maintenance of psychiatric hospitals and psychiatric nursing homes; procedure for admission of mentally ill persons in psychiatric hospitals and psychiatric nursing homes and facilities to be provided for the treatment of mentally ill persons.

2. The matters in respect of which rules may be made are of administrative detail and procedure, and as such, the delegation of legislative power is of normal character.

Bill No. 87 of 1978

A Bill to provide for the construction of works relating to metro railways in the metropolitan cities and for matters connected therewith.

BE it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

CHAPTER I**PRELIMINARY**

Short
title,
commence-
ment and
applica-
tion.

1. (1) This Act may be called the Metro Railways (Construction of Works) Act, 1978.

(2) It shall come into force on such date as the Central Government may by notification in the Official Gazette, appoint,

(3) It applies in the first instance to the metropolitan city of Calcutta; and the Central Government may, by notification in the Official Gazette, declare that this Act shall also apply to such other metropolitan city and with effect from such date as may be specified in that notification and thereupon the provisions of this Act shall apply to that city accordingly.

Definitions. 2. (1) In this Act, unless the context otherwise requires,—

(a) “Advisory Board” means the Advisory Board constituted under section 4;

(b) “arbitrator” means the arbitrator appointed under section 16;

(c) “building” means a house, outhouse, stable, latrine, urinal, shed, hut or wall or any other structure or erection, whether of masonry bricks, wood, mud, metal or any other material or any part

of a building, but does not include a plant or machinery installed in a building or any part thereof or any portable shelter;

(d) "commissioner" means a commissioner of metro railway appointed under section 27;

(e) "competent authority" means any person or authority authorised by the Central Government, by notification in the Official Gazette to perform the functions of the competent authority under this Act for such area as may be specified in the notification;

(f) "development" with its grammatical variations means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land or planting of any tree on land and includes redevelopment;

(g) "land" includes any right or interest in land;

(h) "metro alignment", in relation to any metropolitan city, means such alignment of the metro railway as is specified in the Schedule under that city and includes the metro railway;

(i) "metro railway" means a metro railway or any portion thereof for the public carriage of passengers, animals or goods and includes,—

(a) all land within the boundary marks indicating the limits of the land appurtenant to a metro railway,

(b) all lines of rails, sidings, yards or branches worked over for the purposes of, or in connection with, a metro railway,

(c) all stations, offices, ventilation shafts and ducts, warehouses, workshops, manufactories, fixed plants and machineries, sheds, depots and other works constructed for the purpose of, or in connection with, a metro railway;

(j) "metro railway administration", in relation to any metro railway, means the General Manager of that metro railway;

(k) "metropolitan city" means the metropolitan city of Bombay, Calcutta, Delhi or Madras;

Bombay Act III of 1888. (l) "metropolitan city of Bombay" means the area covered by Greater Bombay as defined in the Bombay Municipal Corporation Act, 1888;

West Bengal Act XIV of 1965. (m) "metropolitan city of Calcutta" means the area described under the heading "1. Calcutta Metropolitan District" in the Schedule to the Calcutta Metropolitan Planning Area (Use and Development of Land) Control Act, 1965;

(n) "metropolitan city of Delhi" means the entire area of the Union territory of Delhi;

Madras Act IV of 1919. (o) "metropolitan city of Madras" means the area covered by the city of Madras as defined in the Madras City Municipal Act, 1919;

(p) "prescribed" means prescribed by rules made under this Act;

(q) "rolling stock" includes locomotives, engines, carriages (whether powered or not), wagons, trollies and vehicles of all kinds moving or intended to move on rails;

(r) "to erect", in relation to any building, includes—

- (i) any material alteration or enlargement of such building,
- (ii) conversion, by structural alteration, into a place for human habitation of such building not originally constructed for human habitation,
- (iii) conversion into more than one place for human habitation of such building originally constructed as one such place,
- (iv) conversion of two or more places of human habitation in such building into a greater number of such places,
- (v) such alteration of such building as would alter the drainage or sanitary arrangements therein or would materially affect its security, and
- (vi) the addition of any rooms in such building.

(2) All other words and expressions used herein and not defined but defined in the Indian Railways Act, 1890, shall have the meanings, respectively, assigned to them in that Act.

9 of 1890.

CHAPTER II

METRO RAILWAY ADMINISTRATION

General
Manager.

3. The Central Government may, for the purposes of this Act, appoint a General Manager for such metro railway.

Constitu-
tion of
Advisory
Board.

4. (1) The Central Government may constitute an Advisory Board for every metro railway for the purpose of assisting or advising that Government on—

(a) the formulation and co-ordination of plans for the development of metro railway and its expansion;

(b) the financing and execution of any project for the construction of the metro railway;

(c) such other matters as may be referred to it for carrying out the purposes of this Act and in particular for the purpose of ensuring that the functions of the metro railway administration are exercised with due regard to the circumstances or conditions prevailing in, and requirements of, the metropolitan city.

(2) The Advisory Board shall consist of such number of members (being officers of the Government) not exceeding nine as may be appointed to it by the Central Government.

(3) The Central Government shall appoint one of the members of the Advisory Board as its Chairman.

(4) The Central Government shall publish in the Official Gazette the names of all the members of the Advisory Board and the Chairman thereof.

(5) The Advisory Board shall meet at such times and places and shall observe such procedure in regard to the transaction of its business as may be prescribed.

(6) The members of the Advisory Board shall hold office for such term as may be prescribed.

5. (1) The Advisory Board may constitute as many committees as it deems necessary consisting wholly of members of such Board or wholly of other persons or partly of members of the Board and partly of other persons for such purposes as it may think fit.

Committees.

(2) Every committee constituted under sub-section (1) shall meet at such times and places and shall observe such procedure in regard to the transaction of its business as may be prescribed.

(3) There shall be paid to the members of the committee who are not members of the Advisory Board, such fees and allowances for attendance at the meetings of the committee and such travelling allowances as may be prescribed.

CHAPTER III

ACQUISITION

6. Where it appears to a metro railway administration that for the construction of any metro railway or any other work connected therewith—

Power to acquire land, etc.

(a) any land, building, street, road or passage, or

(b) any right of user, or any right in the nature of easement, therein,

is required for such construction or work, it shall apply to the Central Government in such form as may be prescribed for acquiring such land, building, street, road or passage or such right of user or easement.

7. (1) On receipt of an application under section 6, the Central Government, after being satisfied that the requirement mentioned therein is for a public purpose, may, by notification in the Official Gazette, declare its intention to acquire the land, building, street, road or passage, or the right of user, or the right in the nature of easement, therein referred to in the application.

Publication of notification for acquisition.

(2) Every notification under sub-section (1) shall give a brief description of the land, building, street, road or passage.

(3) The competent authority shall cause the substance of the notification to be published in such places and in such manner as may be prescribed.

8. On the issue of a notification under sub-section (1) of section 7, it shall be lawful for the metro railway administration or any officer or other employee of the metro railway—

Power to enter for survey, etc.

(a) to enter upon and survey and take level of the land, building, street, road or passage specified in the notification;

(b) to dig or bore into the sub-soil;

(c) to set out the intended work;

(d) to mark such levels, boundaries or lines by placing marks and cutting trenches;

(e) to do all other acts necessary to ascertain whether the metro railway can be laid upon or under the land, building, street, road or passage, as the case may be:

Provided that while exercising any power under this section the metro railway administration or such officer or other employee shall cause as little damage or injury as possible to such land, building, street, road or passage, as the case may be.

Hearing
of objec-
tion.

9. (1) Any person interested in the land, building, street, road or passage may, within twenty-one days from the date of publication of the notification under sub-section (1) of section 7 object to the construction of the metro railway or any other work connected therewith upon or under the land, building, street, road or passage, as the case may be.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation.—For the purposes of this sub-section “legal practitioner” has the same meaning as in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961.

25 of 1961

(3) Any order made by the competent authority under sub-section (2) shall be final.

Declara-
tion of
acquisition.

10. (1) Where no objection under sub-section (1) of section 9 has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land, building, street, road or passage, or the right of user, or the right in the nature of easement, therein for laying the metro railway should be acquired.

(2) On the publication of the declaration under sub-section (1), the land, building, street, road or passage, or the right of user, or the right in the nature of easement, therein shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, building, street, road or passage, a notification has been published under sub-section (1) of section 7 either for its acquisition or for the acquisition of the right of user, or any right in the nature of easement, therein, but no declaration under this section has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority.

Power to
take
possession
of acquir-
ed land,
etc.

11. (1) Subject to the provisions of section 14, where any land, building, street, road or passage has vested under sub-section (2) of section 10, the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land, building, street, road or passage to surrender or deliver possession thereof to

the competent authority or any person duly authorised by it in this behalf within sixty days of the service of the notice.

(2) If any person refuses or fails to comply with any direction made under sub-section (1), the competent authority shall apply,—

(a) in the case of any land, building, street, road or passage situated in any area falling within the Presidency-town of Bombay, Calcutta or Madras, to the Commissioner of Police;

(b) in the case of any land, building, street, road or passage situated in any area other than the area referred to in clause (a), to the Executive Magistrate,

and such Commissioner or Magistrate, as the case may be, shall enforce the surrender of the land, building, street, road or passage to the competent authority or to the person duly authorised by it.

12. Where the right of user in, or any right in the nature of easement on, any land, building, street, road or passage has vested in the Central Government under section 10, it shall be lawful for the metro railway administration or any officer or other employee of the Central Government to enter and do any other act necessary upon the land, building, street, road or passage for carrying out the construction of the metro railway or any other work connected therewith.

Right to enter into the land where right of user, etc., is vested in the Central Government.

13. (1) Where any land, building, street, road or passage is acquired under this Act, there shall be paid an amount which shall be determined by the competent authority.

Determination of amount payable for acquisition.

(2) Where the right of user in, or any right in the nature of an easement on, any land, building, street, road or passage is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land, building, street, road or passage has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent. of the amount determined under sub-section (1) for that land, building, street, road or passage.

(3) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties the amount shall, on an application by either of the parties, to the arbitrator, be determined by the arbitrator.

(4) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (3), as the case may be, shall take into consideration—

(a) the market value of the land, building, street, road or passage on the date of publication of the notification under section 7;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, building, street, road or passage by reason of the acquisition injuriously affecting his other immovable property in any other manner, or his earnings;

(d) if, in consequence of the acquisition of the land, building, street, road or passage, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

Deposit and pay-
ment of
amount. 14. (1) The amount determined by the competent authority under section 13 shall be deposited by the Central Government in such manner as may be prescribed with the competent authority before taking possession of the land, building, street, road or passage.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land, building, street, road or passage is situated.

(5) Where the amount determined under section 13 by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at six per cent. per annum on such excess amount from the date of taking possession under section 11 till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be prescribed with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit.

Competent
authority
to have
certain
powers of
civil court.

15. The competent authority shall have, for the purposes of this Act, all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) reception of evidence on affidavits;
- (d) requisitioning any public record from any court or office;
- (e) issuing commission for examination of witnesses.

16. (1) For every metro railway the Central Government shall, for the purposes of this Act, appoint as arbitrator a person who is, or has been, or is qualified for appointment as, a Judge of a High Court.

Arbitrator.

(2) The arbitrator may, if he thinks it expedient so to do, call in his aid one or more assessors and hear the references wholly or partially with the aid of such assessors.

10 of 1940. (3) Subject to the provisions of this section the provisions of the Arbitration Act, 1940, shall apply to every arbitration under this Act.

17. Nothing in the Land Acquisition Act, 1894, shall apply to an acquisition under this Act.

Land Acquisition Act 1 of 1894 not to apply.

CHAPTER IV

CONSTRUCTION OF WORKS

18. Subject to the control of the Central Government, the metro railway administration shall, for the purpose of constructing any metro railway or any other work connected therewith,—

Functions of metro railway administration.

(a) make or construct in, upon, across, under or over any lands, buildings, streets, roads, railways or tramways or any rivers, canals, brooks, streams or other waters or any drains, water-pipes, gas-pipes, electric lines or telegraph lines, such temporary or permanent inclined planes, arches, tunnels, culverts, embankments, aqueducts, bridges, ways or passages, as the metro railway administration thinks proper;

(b) alter the course of any rivers, canals, brooks, streams or water-courses for the purpose of constructing tunnels, passages or other works over or under them and divert or alter as well temporarily as permanently, the course of any rivers, canals, brooks, streams or water-courses or any drains, water-pipes, gas-pipes, electric lines or telegraph lines or raise or sink the level thereof in order the more conveniently to carry them over or under, as the metro railway administration thinks proper;

(c) make drains or conduits into, through or under, any lands adjoining the metro railway for the purpose of conveying water from or to the metro railway;

(d) erect or construct such houses, warehouses, offices and other buildings and such yards, stations, engines, machinery, apparatus and other works and conveniences, as the metro railway administration thinks proper;

(e) alter, repair or discontinue such buildings, works and conveniences as aforesaid or any of them, and substitute others in their stead;

(f) draw, make or conduct such maps, plans, surveys or tests, as the metro railway administration thinks proper;

(g) do all other acts necessary for making, maintaining, altering or repairing and using the metro railway.

Powers of
metro
railway
adminis-
tration.

19. (1) The metro railway administration shall, for the purpose of constructing any metro railway or any other work connected therewith, have power—

(a) to enter into contracts and leases and to execute all instruments necessary therefor;

(b) to make such number of rail tracks as the Central Government may think necessary upon, under, along or across any land, canal, river, street or road on or in the metro alignment and all other works and conveniences in connection therewith;

(c) to open or divert, as the case may be, any street, road, cable, trench, drain (including a sewer), channel, ditch, culvert or any other device (whether for carrying of sullage, sewage, offensive matter, polluted water, trade effluent, rain water, sub-soil water or any other object), electric or gas supply line or tele-communication line, or telegraph installation, over, across or under any land, building, street, road, railway or tramway;

(d) to burrow tunnels;

(e) to lay down signalling and other communication facilities, electric sub-stations, supply lines and other works;

(f) to regulate drifting of tubewells or sinking of wells, public or private, in the proximate vicinity of the metro alignment;

(g) to do all other things necessary or expedient for the exercise of any of the aforesaid powers.

(2) While exercising any powers under sub-section (1), the metro railway administration shall take such precautionary measures as are necessary, shall do as little damage as possible and shall be liable only for the damage or cost actually suffered or incurred by any person as a result of the exercise of such powers.

Develop-
ment over
metro align-
ment.

20. (1) Any person who proposes to develop any land or building along or on the metro alignment shall, before commencing such development and without in any way limiting his obligation under any other Act to obtain any approval or consent, submit to the metro railway administration details of the proposed development and shall comply with any conditions imposed by the metro railway administration in respect thereof.

(2) The metro railway administration shall, while imposing any condition under sub-section (1), have regard to—

(a) the safety of the metro railway;

(b) such other matters as may be prescribed.

Power to
prohibit
or
regulate
construc-
tion of
buildings
and
excavation.

21. (1) If the Central Government is of opinion that it is necessary or expedient so to do for facilitating the construction of any metro railway or for ensuring the safety of any metro railway, it may, by notification in the Official Gazette,—

(a) direct that no building or any such development as may be specified in the notification shall be constructed or made above the ———

metro alignment or on any land within such distance, not exceeding ten metres on either side of the metro alignment, as may be specified in the notification and where there is any building on such land also direct the owner of, or the person having control over, such building to demolish such building or to make such additions or alterations to such building as may be specified in the notification or to desist from making any such development and within such period as may be specified in the notification;

(b) direct temporary evacuation of all persons together with any movable property or animal that may be in the custody, control or possession of such persons from any building situated above the metro alignment or in any area within a distance not exceeding twenty metres on either side of such alignment and within such period as may be specified in the notification:

Provided that before issuing any notification under this clause, the Central Government shall provide every such person temporarily with alternative accommodation, which in its opinion is suitable, free of cost, or an amount, which in its opinion is sufficient, to procure a temporary alternative accommodation.

(2) Where any property is needed or likely to be needed for providing any alternative accommodation under the proviso to clause (b) of sub-section (1), such property shall be deemed to be needed for a public purpose under section 3 of the Requisitioning and Acquisition of Immovable Property Act, 1952, and the competent authority under that Act shall requisition the property in accordance with the provisions of that Act and such provisions shall, in relation to such requisition, apply accordingly.

(3) In specifying the distance under clause (a) of sub-section (1), the Central Government shall have regard to—

- (a) the nature and the requirement of the metro railway;
- (b) the safety of the building;
- (c) such other matters as may be prescribed.

(4) Where any notification has been issued under sub-section (1) directing the owner or the person having control over any building to demolish such building or to make additions or alterations to such building or to desist from making any development specified in such notification, a copy of the notification containing such direction shall be served on the owner of, or the person having control over, such building, as the case may be,—

(i) by delivering or tendering it to such owner or person; or

(ii) if it cannot be delivered or tendered, by delivering or tendering it to the agent of such owner or person or any adult male member of the family of such owner or person or by affixing a copy thereof on the outer door or on some conspicuous part of the premises in which such owner or person is known to have last resided or carried on business or personally worked for gain; or failing service by these means;

(iii) by post.

(5) Every person shall be bound to comply with any direction contained in any notification issued under sub-section (1).

Payment of amount for prohibition of construction, etc.

22. (1) If in consequence of any direction contained in any notification issued under sub-section (1) of section 21 any person sustains any loss or damage, such person shall be paid an amount which shall be determined by the competent authority in the first instance.

(2) If the amount determined by the competent authority is not acceptable to either of the parties, the amount shall, on an application by either of the parties to the arbitrator, be determined by the arbitrator.

(3) The competent authority or the arbitrator, while determining the amount under sub-section (1) or sub-section (2), as the case may be, shall take into consideration—

(i) the loss or damage sustained by such person in his earnings;

(ii) the diminution, if any, of the market value of the land or building immediately after the date of publication of such notification;

(iii) where in pursuance of any direction any building has been demolished or any additions or alterations to such building have been made or any development has been desisted by such person, the damage sustained by him in consequence of such demolition or the making of such additions or alterations or the desisting from making such development and the expenses incurred by such person for such demolition or additions or alterations:

Provided that the expenses incurred for such demolition or additions or alterations shall not be taken into consideration if such demolition or additions or alterations has or have been done by the metro railway administration under sub-section (2) of section 36;

(iv) if any such person is compelled to change his residence or place of business the reasonable expenses, if any, that may have to be incurred by him incidental to such change.

Power to underpin building or otherwise strengthen it.

23. (1) If the metro railway administration is of opinion that it is necessary or expedient so to do for facilitating the construction of any metro railway or for ensuring the safety of any metro railway, it may, underpin or otherwise strengthen any building within such radius not exceeding fifty metres from the metro alignment.

(2) The metro railway administration shall give to the owner or occupier of such building at least ten days notice in writing before undertaking the work of underpinning or otherwise strengthening the building:

Provided that where the metro railway administration is satisfied that an emergency exists, no such notice shall be necessary.

(3) Where the underpinning or strengthening was executed in connection with—

(a) the carrying out of the works upon the land where any building is situated, or

(b) the construction or operation of any metro railway, the metro railway administration may, at any time after the underpinning or strengthening of such building is completed and before the expiration of a period of twelve months,—

(i) in a case referred to in clause (a), from the completion of such works; and

(ii) in a case referred to in clause (b), from the date on which traffic was opened in the metro railway,

enter upon and survey such building and do such further underpinning or strengthening thereon as it may deem necessary.

24. (1) With a view to making survey, or to ascertaining the nature or condition, of any land or building for the purpose of construction of any metro railway or any other work connected therewith, the metro railway administration or any person authorised by that administration may, at any reasonable hour in the day time and after giving reasonable notice to the owner or occupier of such land or building, enter upon or into such land or building in, along, over or near the metro alignment to—

Power
to
enter,
etc.

(a) inspect the same;

(b) make measurements and drawings and take photographs thereof and such other suitable measures as may be necessary to explore and check up, by digging trial pits or otherwise, the foundation of any building in the vicinity of the metro alignment;

(c) take such other measures as the said administration deems necessary and proper.

(2) Without prejudice to the powers conferred on it under section 19, the metro railway administration may, by writing, request any person or body of persons controlling any sewer, storm water drain, pipe, wire or cable to carry out at the expense of the metro railway administration any alterations thereto which that administration is authorised or may be required to carry out to meet any particular situation for carrying out the purposes of this Act.

(3) If any difference or dispute arises between the metro railway administration and the person or body of persons referred to in sub-section (2) in relation to any such alterations or the cost thereof, such difference or dispute shall be determined by the Central Government in consultation (wherever necessary) with the State Government and the decision of the Central Government in this regard shall not be called in question in any court.

25. (1) Where the metro railway administration exercises any power conferred on it by or under this Act and in consequence thereof any damage, loss or injury is sustained by any person interested in any land, building, street, road or passage, the metro railway administration shall be liable to pay to such person for such damage, loss or injury such amount as may be determined by the competent authority.

Amount
payable
for
damage,
loss
or in-
jury.

(2) If the amount determined by the competent authority under sub-section (1) is not acceptable to either of the parties, the amount payable

shall, on application by either of the parties to the arbitrator, be determined by the arbitrator.

(3) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (2), as the case may be, shall have due regard to the damage, loss or injury sustained by any person interested in the land, building, street, road or passage by reason of—

- (i) the removal of trees or standing crops, if any;
- (ii) the temporary severance of the land, building, street, road or passage;
- (iii) any injury to any other property whether movable or immovable.

Right
to
claim
for
damages.

26. No claim in respect of any damage, loss or injury alleged to have been caused as a consequence of construction of any metro railway or any other work connected therewith under this Act shall lie against the metro railway administration unless such claim is made within a period of twelve months from the date of completion of the construction of such metro railway or other work in the area in which such damage, loss or injury is caused.

CHAPTER V

INSPECTION OF METRO RAILWAY

Appoint-
ment
and
duties
of com-
missioner.

27. (1) The Central Government may appoint as many persons as it thinks fit by name or by virtue of their office to be commissioners of metro railway.

(2) Every commissioner shall—

- (a) inspect the metro railway with a view to determining whether it is fit to be opened for public carriage of passengers and report thereon to the Central Government;
- (b) make such periodical or other inspections of any metro railway or of any rolling stock used thereon as the Central Government may direct;
- (c) perform such other duties as may be imposed on him by or under this Act or any other enactment for the time being in force relating to railways or required by the Central Government.

Powers
of com-
mis-
sioners.

28. Subject to the control of the Central Government every commissioner shall have the power—

- (a) to enter upon and inspect any metro railway or any rolling stock used thereon;
- (b) to make any inquiry or to take any measurement as he thinks fit for the performance of his duties under this Act;
- (c) by an order in writing under his hand and official seal addressed to any metro railway administration, to require the attendance before him of any officer or other employee of the metro railway and to require answers or returns, to such inquiries as he thinks fit to make, from such officer or other employee or from the said administration;

(d) to require the production of any book or other documents belonging to, or in the possession or control of, any metro railway administration which it appears to him to be necessary to inspect for the performance of his duties by or under this Act.

29. Every metro railway administration shall afford to every commissioner all reasonable facilities for performing the duties or exercising the powers imposed or conferred upon him by or under this Act.

Facilities
to be
afforded
to com-
mis-
sioner.

CHAPTER VI

MISCELLANEOUS

30. Every metro railway administration may, with the previous approval of the Central Government, sell or otherwise dispose of any land vested in the Central Government under the provisions of this Act when such land is no longer required for the purposes of the metro railway.

Surplus
land to
be sold
or other-
wise
disposed
of.

31. (1) If any accident occurs during the construction of any metro railway or at any stage subsequent thereto as a consequence of such construction and the accident results in, or is likely to have resulted in, loss of human being or animal or damage to any property, it shall be the duty of the metro railway administration to give notice to the Central Government of the occurrence of any such loss or damage in such form and within such time as may be prescribed.

Notice of
accidents
and
enquiries.

(2) On receipt of a notice under sub-section (1), the Central Government may, if it thinks fit, appoint a commission to enquire into the accident and report as to—

(a) the cause of such accident;

(b) the manner in which and the extent to which the provisions of this Act or any other Act for the time being in force in so far as those provisions regulate and govern the safety of any person, animal or property, have been complied with.

(3) The commission appointed under sub-section (2), while holding an enquiry, shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery or production of any document;

(c) reception of evidence on affidavits;

(d) requisitioning any public record from any court or office;

(e) issuing commission for examination of witnesses.

32. (1) The Central Government may, by notification in the Official Gazette,—

Power to
alter the
entries in
the

(a) add to the Schedule the metro alignment in respect of any metropolitan city to which this Act is made applicable under sub-section (3) of section 1;

(b) alter any metro alignment specified in the Schedule if it is of opinion that such alteration is necessary for the construction and maintenance of the metro railway to which such alignment relates.

(2) Every notification issued under sub-section (1) shall, as soon as may be after it is issued, be laid before each House of Parliament.

Prohibition of obstruction.

33. No person shall, without any reasonable cause or excuse, obstruct any person with whom the metro railway administration has entered into a contract, in the performance or execution by such person of such contract.

Local authorities to assist.

34. Every local authority shall render such help and assistance and furnish such information to the metro railway administration as that administration may require for discharging its functions and shall make available to the said administration for inspection and examination such records, maps, plans and other documents as may be necessary for the discharge of such functions.

Prohibition of removal of marks.

35. No person shall remove any marks placed or fill up any trench cut for the purpose of marking levels, boundaries or lines by the metro railway administration.

Penalty for failure to comply with directions issued under section 21.

36. (1) If any person wilfully fails to comply with any direction contained in any notification issued under section 21, he shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Without prejudice to the provisions of sub-section (1), if any person fails to demolish any building or make additions or alterations thereto in pursuance of any direction contained in any notification issued under section 21 within the period specified in the notification, then, subject to such rules as the Central Government may make in this behalf, it shall be competent for any officer authorised by the metro railway administration in this behalf to demolish such building or make necessary additions or alterations thereto.

General provision for punishment of offences.

37. Whoever contravenes any provision of this Act or of any rule made thereunder shall, if no other penalty is provided for such contravention elsewhere in this Act or the rules, be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Offences by companies.

38. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

39. No suit or application for injunction shall lie in any court against the Central Government or the metro railway administration or any officer or other employee of that Government or the metro railway or any person working for or on behalf of the metro railway administration, in respect of any work done or purported to have been done or intended to be done by it or the said administration or such officer or other employee or such person in connection with the construction of any metro railway or any other work connected therewith.

Bar of
juris-
diction.

40. The provisions of this Act or any rule made or any notification issued thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Effect
of Act
and
rules,
etc., in-
consis-
tent
with
other
enact-
ments.

41. (1) No suit, prosecution or other legal proceeding shall lie against the Central Government, the metro railway administration or any officer or other employee of that Government or the metro railway for anything which is in good faith done or intended to be done under this Act.

Protec-
tion of
action
taken in
good faith.

(2) No suit, prosecution or other legal proceeding shall lie against the Central Government or the metro railway administration or any officer or other employee of that Government or the metro railway for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

42. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, do anything not inconsistent with such provisions which appears to it to be necessary or expedient for the purpose of removing the difficulty:

Power
to re-
move
difficul-
ties.

Provided that no such order shall, in relation to any metropolitan city, be made after the expiry of a period of two years from the date on which this Act applies or is made applicable to such metropolitan city under sub-section (3) of section 1.

43. Save as otherwise provided in this Act, the provisions of this Act shall be in addition to, and not in derogation of, the Indian Railways Act, 9 of 1890, 1890.

44. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for the following matters, namely:—

(a) the times and places at which the Advisory Board shall meet and the procedure in regard to transaction of business by the Advisory Board under sub-section (5) of section 4;

(b) the term of office of the members of the Advisory Board under sub-section (6) of section 4;

(c) the times and places at which the committees shall meet and the procedure in regard to transaction of business by the committees under sub-section (2) of section 5;

(d) the payment of fees, allowances and travelling allowances to the members of the committee under sub-section (3) of section 5;

(e) the form in which an application for acquisition shall be made under section 6;

(f) the places at which and the manner in which the substance of the notification shall be published under sub-section (3) of section 7;

(g) the manner in which the amount shall be deposited with the competent authority under sub-sections (1) and (6) of section 14;

(h) the matters to be specified under clause (b) of sub-section (2) of section 20;

(i) the matters to be specified under clause (c) of sub-section (3) of section 21;

(j) the form in which and the time within which a notice shall be given under sub-section (1) of section 31;

(k) any other matter which is required to be or may be prescribed.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

1 of 1894.

45. Notwithstanding anything contained in this Act any proceeding, for the acquisition of any land, under the Land Acquisition Act, 1894 for the purpose of any metro railway, pending immediately before the commencement of this Act before any court or other authority shall be continued and be disposed of under that Act as if this Act had not come into force.

THE SCHEDULE

[See section 2(h) and sub-section (1) of section 32]

METROPOLITAN CITY OF CALCUTTA

STATEMENT OF OBJECTS AND REASONS

To meet the inadequacies of the existing surface transport system and the ever increasing demand of urban commuter traffic in Calcutta, the idea of introducing the mass rapid transit system, popularly known as metro railway, has been considered to be the only solution, and, accordingly, the construction work has been started.

The methods of construction of an underground metro railway are by cut and cover or by burrowing tunnels. The metro alignment will pass mainly under public roads although, in some portion, the alignment will pass under private properties. Stations and other ancillary works connected with the construction of the metro railway will be located in public streets or in road side private premises. The execution of the project in the affected zones necessarily entails road diversions, closure of all vehicular and pedestrian traffic, and diversion and relocation in a planned manner of various public utility services maintained by sundry authorities. Building and rebuilding operations in the proximate vicinity of a metro railway are also required to be regulated so that such activities do not jeopardise or endanger the metro railway, tunnels, alignments and other allied installations. Further more, in constructing the metro railway, whether by tunnelling or by the cut and cover method, it may be that a certain amount of ground settlement occurs requiring, in particular cases, underpinning or strengthening of certain old and dilapidated buildings or, in extreme cases, compulsory evacuation of people from the affected buildings for a temporary period.

Under section 7 of the Indian Railways Act, 1890, no railway construction is permissible in case of immoveable property not belonging to the railway administration unless the same is acquired under the law for the time being in force for acquisition of land. Although land can be acquired outright for construction of the metro railway and other incidental works under the Land Acquisition Act, 1894, the procedure for such acquisition is long-drawn and costly. Since the metro alignment will pass mainly under public land and at places under private properties, acquisition of mere right of user in the land, building, street, road or passage would mostly be sufficient for the purpose of construction of the metro railway or other works connected therewith without acquiring greater interest in such land, building, etc. Further, from the initiation of the land acquisition proceedings right up to their culmination by taking of possession, the whole process involves a time consuming and long-drawn procedure which does not seem to afford or ensure quick completion of acquisition.

The present Bill confers necessary enabling powers on the Central Government for carrying out the aforesaid purposes. The Bill provides a speedy and adequate procedure for the acquisition of lands, buildings, streets, roads or passage or the right of user in, or the right in the nature of easement on, such building, land, etc., by the Central Government to the exclusion of the Land Acquisition Act, 1894.

Adequate provision has been made for the consideration of any objection that may be made by any person interested in the land, building, road, street, etc., and for payment of an amount for the aforesaid acquisition.

The other main features of the Bill are—

(i) appointment of a commissioner of metro railway for the purpose of the inspection of the metro railway and for such other duties and powers as may be imposed or conferred upon him;

(ii) constitution of Advisory Boards for aiding and advising the Central Government in the matter of formulation and co-ordination of plans in the development of metro railway;

(iii) appointment of competent authorities or arbitrators for settling disputes as may be referred to such authorities or arbitrators under the provisions of the Bill.

The proposed Bill seeks to achieve the above objects.

NEW DELHI;
The 18th April, 1978.

MADHU DANDAVATE.

FINANCIAL MEMORANDUM

Clause 2(1) (e) of the Bill empowers the Central Government to authorise any person or authority to perform the functions of competent authority under the Bill. This will involve an expenditure on the pay and allowances of the competent authority. The expenditure in this connection is likely to be of the order of Rs. 40,000 per annum.

Clause 3 of the Bill requires the Central Government to appoint a General Manager for every metro railway. This will involve an expenditure on the pay and allowances of the General Manager. A metro railway has been sanctioned at present only for Calcutta and a General Manager is already in position. The expenditure in this connection is likely to be of the order of Rs. 45,000 per annum (at the maximum of the scale).

Clause 4 of the Bill requires the Central Government to constitute an Advisory Board for every metro railway. As the members of the Advisory Board will be officers of the Government no expenditure on this account is anticipated. However, under clause 5 of the Bill the Advisory Board may constitute committees and in terms of clause 5(3) the members of the committee who are not members of the Advisory Board are entitled to fees, daily and travelling allowances for attendance at the meetings. Such expenditure is likely to be of the order of Rs. 50,000 per annum.

Clause 14 of the Bill provides for the amount determined by the competent authority under clause 13 in the event of acquisition of land, etc., being deposited by the Central Government with the competent authority. Sub-clauses (5) and (6) of this clause also provide for award and payment of interest on any excess amount that may be determined by the competent authority over and above the amount determined by the arbitrator. As the Central Government's liability will depend upon the land, etc., acquired, it is not possible to give a precise estimate of the amount involved in such acquisition.

Clause 16(1) of the Bill provides for appointment of arbitrator. The appointment of arbitrator will involve an expenditure on the pay and allowances of the incumbent. Such expenditure is likely to be of the order of Rs. 60,000 per annum.

Clause 18 of the Bill lists the function of the metro railway administration. This includes besides construction of the metro railway all other appurtenant works like diversion of drains, water-pipes, gas-pipes, etc., construction of houses, offices, etc. This will involve expenditure to the Government. It is not possible to give a precise estimate of the amount that may be involved in such construction. It may be, however, added that the metro railway already sanctioned for Calcutta is estimated to cost Rs. 250 crores.

Clause 19 of the Bill deals with the powers of the metro railway administration. The exercise of such powers will involve expenditure to the Government. A precise estimate of the extent of expenditure involves in the exercise of such powers cannot be made out. As mentioned elsewhere the metro railway construction for Calcutta is estimated to cost Rs. 250 crores.

Clause 21(1) (b) provides for a directive being issued for temporary evacuation from any building situated above the metro alignment. In that event it is necessary for the metro railway administration to provide temporary alternative accommodation or pay an amount sufficient to procure a temporary alternative accommodation. Provision of temporary alternative accommodation or the payment in lieu thereof will involve an expenditure, a precise estimate of which cannot be given at this stage.

Clause 22 of the Bill provides for the payment of an amount for the prohibition or the regulation of construction of buildings and excavations within a specified distance of the metro railway. This clause also provides for the matter being taken up to the arbitrator if the amount determined by the competent authority is not acceptable to either of the parties. The amount involved will depend upon the prohibition or regulation notified for the purpose. It is not possible to give a precise estimate of the amount that may be involved in making such payments.

Clause 23(1) of the Bill provides for underpinning or otherwise strengthening any building within a 50 metre radius of the metro alignment for facilitating the construction of any metro railway or for ensuring the safety of metro railway. Such underpinning and/or strengthening will involve an expenditure, a precise estimate of which cannot be given.

Clause 24(2) confers power on the metro railway administration to request while carrying out the purposes of this Bill any person to carry out alterations to any sewer, storm-water drain, pipe, wire or cable at the cost of the metro railway administration. Clause 24(3) provides for the settlement of any difference or dispute about the alterations or the cost thereof. It is not possible to give the precise estimate of the amount that may be involved in so bearing the cost of any alteration under clause 24(2) or as may be decided by the Central Government under clause 24(3).

Clause 25 of the Bill provides for the payment of an amount for any damage, loss or injury sustained by any person interested in any land or building as a result of the metro railway administration entering into such land or building to explore and check up the foundation of any building in the vicinity of metro railway alignment by digging trial-pits or otherwise or in requesting any person or body of persons to carry out any alteration to any sewerage storm-water drain, pipe-water or cable, etc., to meet any particular situation for carrying out the purpose of this Act. Such payment will involve an expenditure to the Government, the extent of which will depend upon the facts and circumstances of each case. A precise estimate of the amount involved cannot be given.

Clause 27 of the Bill provides for the appointment of commissioners of metro railway for the purpose of inspection of the metro railway. Such appointment will involve an expenditure to the Government on account of pay and allowances to the commissioner appointed. Such expenditure is likely to be of the order of Rs. 40,000 per annum per commissioner.

Clause 31 of the Bill deals with the accidents that may occur during construction of metro railway or at any stage thereafter and provides for the appointment of a commission of enquiry to enquire into the accident. Any such appointment of a commission will involve an expenditure to the Government on the pay, travelling, daily and other allowances to the member or members of the commission as may be so appointed. The appointment of such a commission will arise only in the event of an accident occurring. A precise estimate of the expenditure involved cannot be given.

The Bill does not involve any other recurring or non-recurring expenditure.

PRINTED BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD,
NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 1978

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 32 of the Bill empowers the Central Government to add to the Schedule the metro alignment in respect of a metropolitan city to which the legislation applies. It is not possible to visualize at this stage the exact alignment of the metro railway in the metropolitan cities, other than Calcutta. This clause also gives power to the Central Government to alter any metro alignment specified in the Schedule, if it is of opinion that such alteration is necessary for the construction and maintenance of the metro railway to which such alignment relates.

2. Clause 42 of the Bill empowers the Central Government to provide, by order, published in the Official Gazette, for the removal of difficulties that may arise in giving effect to the provisions of the Bill.

3. Clause 44 of the Bill empowers the Central Government to make rules to carry out the purposes of the Bill when enacted. The matters in respect of which such rules may be made, *inter alia*, relate to the times and places at which the Advisory Board shall meet and the procedure in regard to transaction of business by the Advisory Board; the term of office of the members of the Advisory Board; the times and places at which the committees shall meet and the procedure in regard to transaction of business by the committees; the payment of fees, allowances and travelling allowances to members of the committee; the form in which the application for acquisition under clause 6 shall be made; and the manner in which the amount shall be deposited with competent authority.

4. The above matters relate to procedure and administrative details and it is not practicable to provide them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

AVTAR SINGH RIKHY,

Secretary.

